

Council of Europe
Conseil de l'Europe



European Union
Union européenne

PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

Proposed final version of addendum to Albanian Law Drafting Manual:

“Corruption Proofing:

Using Good Law Drafting to Avoid Creating Corruption Risks in Draft Legislation”

Prepared by:

Ms Cristina Cojocar, Council of Europe expert, and Mr Quentin Reed, PACA Team Leader

April 2011

Table of Contents

<i>A. Introduction</i>	3
<i>B. Corruption risks in draft legislation</i>	3
I. Language	3
II. Coherence of the draft and its interaction with other legislation	4
II. The manner in which duties of public authorities are established and defined	5
III. Justification, the public interest and the manner of exercising rights and obligations	9
IV. Transparency and access to information	11
V. Accountability and responsibility	12
VI. Control mechanisms	13

For any additional information please contact:

Corruption and Fraud Unit
Economic Crime Division
Directorate of Co-operation - DG-HL
Council of Europe
F-67075 Strasbourg Cedex FRANCE
Tel +33 388 41 29 76/Fax +33 390 21 56 50
Email: lado.lalovic@coe.int
Web: www.coe.int/economiccrime

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

A. Introduction

Public authorities and public servants draw their powers and competencies from laws. Poor legislation – and in particular where terms, duties, powers and competencies are unclearly defined – may therefore help create opportunities for corruption. This addendum to the Albanian Law Drafting Manual highlights types of provisions in legal acts which may increase the likelihood of corruption occurring, whether this is by design (a deliberate attempt to favour certain interests) or (more often) by accident). For each corruption risk the addendum identifies how the Manual may be used by legal drafters to minimise the incidence of such provisions, and provides further guidance on avoiding corruption risks where the Manual does not explicitly address them.

B. Corruption risks in draft legislation

Corruption risks in draft legislation may be divided into seven categories and a total of 33 possible risks. These categories are:

- I. Language
- II. Coherence of the draft and its interaction with other legislation
- III. The manner in which duties of public authorities are established and defined
- IV. Justification, the public interest and the manner in which rights and obligations are exercised
- V. Transparency and access to information
- VI. Accountability and responsibility
- VII. Control mechanisms

The following sections explain these corruption risks, refer to relevant sections of the Manual that should be used to avoid such risks in draft legislation, and where elaborate other guidelines where the Manual does not address such risks.

I. Language

To avoid corruption risks from this category, please refer to Manual section 3.4.

1. Unclear/ambiguous expression that allows abusive interpretation

This is where a draft legal act expresses terms or statements unclearly or ambiguously. This creates a risk of corruption if it provides opportunities for authorities/officials to apply provisions according to more than one interpretation depending on the preference of those responsible for implementation of the provisions.

The text of drafts must meet the technical, legal and linguistic requirements established in Manual sections 3.1, 3.4.1, 3.4.6, 3.4.12.

2. Use of different terms for the same phenomenon or use of the same term for distinct phenomena

This is the inconsistent or incoherent use of notions in the draft's text by employing different terms to refer to the same phenomenon and/or employing the same notion to refer to different phenomena. As in the case of Risk 1, this may facilitate abuse and corruption by allowing officials to treat the same phenomenon as distinct phenomena due to the presence of more than one term describing it. This risk may for example result in officials requiring citizens to repeat procedures that should only have been required once.

To avoid this risk, Manual sections 3.4 and 3.4.2 are useful.

3. New terms which are not defined in the legislation or the draft

This is the use of terms which are not acknowledged in the legislation, which are not clearly explained in the text of the draft and which lack broad common understanding that would confer to these terms a single and uniform meaning. This may facilitate excessive discretion and diverse practices in the interpretation of these terms, opening possibilities of corruption initiated by either officials or citizens/subjects regulated by the legal act in order to secure a particular interpretation.

The proper use/definition of terms is presented in Manual sections 3.3.4 and 3.4.2 to 3.4.5.

II. Coherence of the draft and its interaction with other legislation

4. Faulty reference provisions

Reference provisions (whether referring to other provisions within the same law or to provisions in other laws) are faulty if it is hard or impossible to identify the other provisions they refer to or when these refer to non-existent legislation. Faulty reference provisions typically use expressions such as „in compliance with the legislation in force”, „under the law”, „in the prescribed manner”, „according to the legal provisions” etc. Such provisions may enable public servant to apply different referenced provisions at his/her discretion, and to abuse such discretion for corrupt gain.

For correct use of reference provisions in the drafts, please refer to the Manual section 3.5.

5. Faulty delegation provisions

Such provisions grant to another authority unjustified competence to establish independently binding rules, regulations, bans and exceptions. Delegation of regulatory competences is dangerous when:

- given to the same authority that responsible for enforcement of the said rule/regulations;
- given to an authority that still does not exist, generating uncertainty and possible arbitrary applications of power until that authority is created;

- the law sets “half rules”, delegating the regulation of the other half to another authority, usually the one that is expected to enforce it, or sets the rule and delegates another authority to establish either all or more exceptions from it;
- such competences are contrary to the status of the delegated authority or are given by another/higher law to the legislative branch.

Faulty delegation provisions generate other risks: widening of discretionary powers, random establishment of terms/deadlines, excessive requirements for the exercise of certain rights, etc. Typical indicators of this are the use of expressions such as „following the rules/procedure/term set by the Ministry/another authority”, „according to the conditions established by...”, „under the conditions established in its Regulations”, „other exceptions/conditions/acts, established by...”, etc.

For correct use of delegation provisions in draft laws, please refer to Manual sections 1.4 and 3.3.7.

6. Concurrent provisions

These are provisions creating a legal conflict. The conflict can appear between different provisions within the draft (internal conflict) and between the provisions of the draft and of other laws, national or international (external conflict). External conflict of legal provisions can appear between legal acts of the same legal power (i.e. between two organic laws), between acts of different level, or between codes and other legislative acts.

Concurrent provisions hinder the correct enforcement of laws and create preconditions (discretion) for public servants to enforce the provision which momentarily suits them, or to extract bribes in return for enforcing according to one provision rather than another.

To avoid concurrent provisions, Manual sections 3.3.9 and 3.3.10 are helpful.

7. Gaps

Legislative gaps or ‘voids’ are the legislator’s omissions in regulating aspects of social relationships which exist or are likely to emerge from objective reality or from the application of other provisions of the same draft. The danger of this corruption risk lies in the uncertainty it generates in social relationships, especially those referring to mechanisms for the enforcement of rights, fulfilment of obligations, ambiguity of public servants’ duties and administrative proceedings they are responsible for etc. - which may allow or even force authorities responsible for enforcement to fill the gap in an arbitrary fashion.

Legislative drafters should seek to ensure that draft legal acts regulate all important aspects of social relationships that are the subject of the draft or are created by the draft itself.

II. The manner in which duties of public authorities are established and defined

8. Extensive regulatory powers

These are provisions which endow a public authority with rights to legal regulation in areas exceeding their competences. Regulatory powers are considered excessive, if the area of the

executive authority's legal intervention coincides with the legislator's area of intervention. The executive branch has the task to adopt legal acts aimed at enforcing the law and not at completing it.

Extensive regulatory powers may often be found in draft laws developed by executive authorities, which for example allow the authority responsible for the enforcement of a law to establish convenient rules for itself. Extensive regulatory powers are frequently found in non-exhaustive listing of rights and duties of the public authorities, of procedural aspects etc., provisions containing derogations providing for the establishment of exceptions additional to those envisaged in the law, other rights, obligations, and procedural aspects to be determined through departmental acts, etc.

To avoid this corruption risk, please refer to Manual section 3.3.7.

9. Excessive duties or duties contrary to the status of the public authority

These are powers which exceed the competences or contradict the status of the public authority that is assigned these powers.

Legal drafters should avoid this risk by comparing the provisions of the draft with the framework laws regulating the fields in which the executive public authority is working, as well as the act determining its status and main duties, and ensuring that the powers assigned by the draft do not contradict these laws.

10. Duties set up in a manner that allows waivers and abusive interpretations

These are powers of the public authorities which are formulated ambiguously, determining the possibility of interpreting them differently in different situations, including interpreting them in the preferred version or derogating from them. Unclear formulation of powers generates the possibility for an official to choose the most convenient interpretation of his/her powers, and at the same time may create incentives for the official to extract bribes (or citizens to offer them) in return for the official choosing a particular interpretation.

Draft provisions defining the powers of a public authority should follow the rules of clarity and accuracy provided in Section 3.1 of the Manual.

11. Parallel duties

These are duties of a public authority that are established in the draft, while the draft or other legislation allocates similar or identical duties to other public authorities. Parallel duties give rise to conflicts between competencies of the respective authorities, or may create the risk that both authorities neglect to exercise their competence. Parallel duties also appear in situations where the adoption of certain decisions is assigned to two or more public authorities (joint decisions). Such duties introduce excessive discretion or arbitrariness in the performance of official duties, and *inter alia* opens space for the proper authority to extort bribes in return for performing its duties, or conversely for citizens to bribe an inappropriate authority to perform duties in a particular way. The level of this risk increases when provisions allow overlapping competences of public servants within the same authority or between distinct public authorities, or when several officials are in charge of the same decision or action.

The drafter should always make it clear which authorities are responsible for procedures and actions at stake or for which exact parts of a procedure/action they are in charge of. Such corruption risks may be successfully avoided through the good application of Manual sections 3.1.

12. Regulating an obligation of the public authority by using discretionary formulations such as “may”, “has the right”, “can”, “is entitled” etc.

Discretionary formulations create corruption risks if they formulate as a ‘right’ what should be the obligation/duty of a public authority or servant. Such discretion may be abused by officials, for example to extract corrupt benefits in return for performing what should be an obligation. The danger of this corruption risk further increases when there are no criteria to identify under what circumstances the official “has the right” or “can” and in what circumstances he/she has not the right and cannot perform the duties.

For appropriate use of modal verbs, please refer to Manual section 3.4.20.

13. Exercising duties of setting up rules, controlling their implementation and applying sanctions

This is the empowerment of an executive authority with excessive competence to establish rules, to verify their observance and to impose sanctions for violation of these rules. Such empowerment may increase the risk of corruption in two ways. The authority/public servants may abusively promote or damage the interests of selected persons subject to the rules established by the authority. As all competencies are cumulated under the same authority, persons subject to the rules set by the authority may be more tempted to corrupt representatives of the authority in order to avoid control or sanctioning.

Law drafters should adhere to Section 3.3.7 of the Manual, and ensure that the authorisations and principles mentioned there only allocate delegated rule-making authority to an executive body to the extent that is necessary for it to perform its functions optimally.

14. Non-exhaustive, ambiguous or subjective grounds for a public authority to refuse to act

This is the incomplete establishment of cases when an authority can refuse to carry out certain actions or execute certain obligations. The list of grounds for refusal to carry out actions or obligation may be left open for example by using reference provisions to unspecified legislation, or through delegation provisions which establish that the list of grounds for refusal is to be completed by an internal administrative act of the public authority.

To avoid this risk, the drafter should always specify clear, unambiguous, objective and exhaustive grounds for refusal by a public authority.

15. Absent/unclear administrative proceedings

Where administrative procedures are not established or defined clearly, this may create excessive discretion of responsible officials to develop procedural rules which are convenient to their own interests but contrary to the public interest. This may typically arise when the text of a draft legal act mentions or implies the existence of administrative procedures but:

- fails to develop them;
- uses vague reference provisions to unclearly defined legislation to regulate such procedures;
- uses delegation provisions to transmit the task of regulating the administrative procedure or a part of it to the directly responsible authority;
- uses ambiguous linguistic formulations to describe the procedures;
- establishes discretion on the part of public officials with respect to various aspects of the procedure, without determining clear criteria for the use of such discretion (for example failing to state that discretion should be exercised in order to best achieve the purpose of the procedure).

An example of how to set up clear administrative procedures is provided by the guidance in Manual sections 3.3.11 and 3.3.12 on provisions for the expiry and entry into forces of legal acts

16. Lack of specific terms/deadlines

Specific administrative terms are lacking when these are not defined, not clearly articulated or defined based on confusing or ambiguous criteria. The lack of specific terms creates excessive discretion on the part of public officials to interpret the meaning of terms provided in the legal act, and may thereby establish opportunities for abusive interpretations and corruption.

An example of how to set up clear administrative terms in case of entry into force of the draft, is described in Manual section 3.3.12.

17. Unjustified timeframes

These are administrative terms/deadlines which are too long or too short, making the exercise of rights and interests difficult to realise. Terms are too long if the actions that are to be undertaken within them are simple and do not require such a length of time (for example the provision to a citizen by a tax authority of confirmation that the former is not the subject of any proceedings initiated by the latter), or the interest/right in question is of a ‘cannot wait’ nature (for example the issuance of food vouchers). When the law gives the right to the public authority to take measures inside terms which are too long, the interested persons are tempted to motivate through corrupt means urging the taking of the respective measures by the responsible public officials. Terms are too short when the actions to be fulfilled require longer timeframes to be fulfilled than the term set by the draft, leading inevitably to the violation of the terms and risks of corruption, for example the extortion of bribes by authorities responsible for sanctioning the violation of terms/deadlines.

Section 3.3.12 of the Manual advises care in the setting of terms with regard to the entry of force of a legal act; such care should be extended also to all legal provisions that establish terms and deadlines.

18. Failure to identify the responsible public authority/subject to which a provision refers

This risk occurs where a legal act fails to expressly define the public authority to which a legal provision applies, even if the authority is obvious or identifiable from the context.

This may generate competition/conflict between different public authorities concerning powers and rights of the authorities regulated by the provisions of the legal act, or conversely refusal by authorities to perform obligations imposed by the law. This makes it more difficult for individuals and legal entities to exercise their legitimate rights and interests and may increase the incentives for both individuals/legal entities on the one hand, and public servants of the authorities concerned on the other to engage in corrupt practices.

This risk will be avoided if the prescriptions of Manual section 3.3.5 are followed.

III. Justification, the public interest and the manner of exercising rights and obligations

19. Justification of the draft

When a draft legal act lacks an Explanatory Memorandum, the Memorandum is poorly drafted or formalistic, the draft will frequently be affected by unintended corruption risks such as faulty reference and delegation provisions, concurrent provisions, gaps, ambiguous linguistic formulation, lack of administrative procedures etc. Where the arguments contained in a Memorandum are false this indicates intentions of the drafter that may not be in line with the public interest.

This risk may be avoided by adherence to the rules elaborated in Section 3.8 of the Manual.

20. Promotion of interests contrary to the public interest

Legal acts may – by design or, perhaps less often in this case, by accident – promote particular individual or group interests to an extent that runs counter to the broader public interest. The types of interests promoted by such provisions may vary widely, including personal (e.g. family), corporate, ethnic or political interests. Examples include electoral code provisions that provide advantages to a particular political party to an extent that the equality of voters is violated (for example gerrymandering), provisions of a law regulating one economic sector (for example insurance) that accord special status or advantages to one company, etc. This may typically be achieved through discrimination in favour of one individual or group, for example through the granting of a waiver from provisions that apply to all other subjects, cancelling or forgiving debts to the state

21. Infringement of interests contrary to the public interest

Legal norms may also damage individual or group interests to the detriment of the public interest. This may be the direct side-effect of the promotion of particular interests (see 20 above), but may occur without any particular interests benefiting obviously – for example provisions that weaken the protection of vulnerable minorities or make it more especially difficult for particular groups to exercise their rights.

This risk, as well as the one described in section 20, are of a particularly serious nature as they are likely to reflect a deliberate strategy of designing the rules of the game to serve particular

partial interests, by implication at the expense of the public interest. They are by nature discriminatory and will tend to undermine human rights.

In order to avoid these risks, careful adherence to the guidelines/principles laid out in sections 1.1 (objectives of legislation), 1.3 (justification) and 1.5 (evaluation) of the Manual is essential.

22. Exaggerated costs of implementation/enforcement as compared to the public benefit

This risk occurs where a draft establishes financial and/or other expenditures, public or private, needed for the implementation and/or enforcement of the provision, which exceed the benefits obtained by the society or individuals as a result of the enforcement of the provision. This creates the risk that public or private resources will be expended for low public benefit. Where disproportionate costs are imposed on private subjects, they may be tempted to elude legal requirements, perhaps with the help of bribing regulators to ignore their failure to fulfil their legal obligations. If excessive costs are imposed on public authorities, they may commit abuses in order to avoid the costs of enforcement, or conversely to attract excessive resources. In certain cases the enforcement of the provision may be made impossible because of the lack of resources; an example of the latter is where asset declaration requirements are imposed upon such a wide range of public officials that supervision/checking of declarations becomes impossible – indirectly facilitating corruption.

Manual section 1.5.4 underlines the need for a cost-benefit analysis of draft laws and balanced imposition of costs of implementation/enforcement.

23. Excessive requirements for the exercise of rights/performance of obligations

This risk occurs where, in order for citizens or subjects to exercise their rights or fulfil their obligations (for example to obtain a license, pay taxes, obtain various official documents confirming facts about themselves, etc), requirements are imposed that are too numerous, too complicated or difficult to meet when compared to the importance of the right or obligation in question. This may encourage both citizens and officials to engage in corruption to circumvent such requirements.

Legal drafters should pay attention to ensuring that the requirements imposed on citizens to exercise their rights or perform their obligations are relevant, necessary and reasonable.

24. Provisions establishing unjustified exceptions and waivers

These are provisions which establish exceptions/waivers from a rule without justification (i.e. reason for the need for the exception). Provisions establishing such exceptions may constitute the promotion of particular interests (risk 20). Such provisions create an additional corruption risk, however, if the exact conditions under which an exception applies are not sufficiently clearly defined, thereby creating the risk that officials will use their discretion to extract bribes in return for the application or non-application of an exception or waiver, and citizens will similarly be motivated to provide such bribes. Such provisions often coincide with (i.e. are) faulty reference provisions (for example: „except for the cases provided for in the legislation

in force”) or delegation provisions (for example: „except for the cases stipulated in the Regulations of the responsible public authority”).

25. Unfeasible provisions

These are provisions that, by virtue of specific circumstances of the regulated area, cannot be enforced, as they do not correspond to the social reality and relations – for example imposing a blanket obligation (under threat of sanction) of all citizens to fill in census forms when a proportion of the population lives abroad, or some citizens have no address, etc. Unfeasible provisions may result in corrupt abuses whereby enforcement authorities cash in on ‘non-feasibility’ by collecting bribes in return for not enforcing the provisions in question.

Drafters should avoid establishing obligations that are impossible for some or all subjects to observe, or ensure exemptions as necessary for persons who can not be expected to meet the obligations, etc.

IV. Transparency and access to information

26. Lack/insufficiency of access to information of public interest

This is the absent or insufficient regulation of a public authority’s duty to inform citizens, or of the right of citizens to access to data, facts, circumstances of personal or general interest and which normally should be accessible without undertaking special efforts. Information of public interest may include a very wide range of information, but particularly important provisions are those that ensure the following:

- Provision of/access to information whose provision is necessary for the draft law to be properly implemented
- Provision of/access to information concerning the rights and obligations of citizens and of public authorities
- Provision of/access to information that citizens or subject entities need in order to exercise their rights and/or fulfil their obligations
- Provisions and procedures of ensuring the access of the general public to information regarding the implementation of the draft, submission of thematic, periodical reports;
- Provisions on reporting on the results of the public authority’s activity and results before the society;
- Provisions ensuring the transparency of public authorities via information technologies (web pages and resources and their quality, open databases, interactive forms for the citizens and legal entities to address/communicate with the public authority, etc.)

Provisions that fail to ensure the provision of or access to such information may encourage various forms of corruption, ranging from the payment of bribes by citizens in order to obtain information to the extortion of bribes by public officials in return for the provision of services that are (unknown to citizens) a part of their ordinary duties, etc. This risk is often found together with ambiguous formulations and/or lack/ambiguity of administrative proceedings.

V. Accountability and responsibility

To avoid corruption risks from this category, please refer to Manual section 3.3.8.

27. Lack of clear accountability of public authorities for the violation of draft provisions

This is the omission or ambiguity in establishing the responsibility of a public authority or its officials for the violation of provisions of the proposed legal act. Typical cases will be where no responsibility or liability is established at all, or provisions referring to such liability/responsibility are declarative and impossible to enforce. In such a situation, it is more likely that citizens/subjects will try or be forced to engage in corruption to ensure that officials fulfil their obligations.

This risk is often found in the presence of faulty reference provisions, specifically provisions that establish responsibility/liability by referring to other legislation without specifying this legislation clearly (see Risk 4). It is also often found where provisions establish actions of authorities as optional rather than obligatory (see Risk 12). In addition to following the guidance relating to that risk, legal drafters should in general ensure that where a draft legal act allocates responsibilities or tasks to a public authority, the draft clearly establishes the obligation of the authority to perform those responsibilities or tasks.

28. Lack of clear sanctions for the violation of draft provisions

This is the failure to establish sanctions for violation of legal provisions by either the authorities or citizens/entities to which the provisions apply, or ambiguity or lack of clarity in such sanctions. When clear sanctions are absent, this makes it easier for officials to abuse discretion (in the case of sanctions applicable to the citizens) or generally neglect their obligations (in the case of sanctions applicable to officials for failure to observe the law).

In addition to adhering to Section 3.3.8 of the Manual, on sanctioning provisions, legal drafters should take care to ensure that it is clear in the draft in what cases and on what grounds sanctions are applicable for violation of the law sanctions for violation of provisions of a draft law are clearly stated, proportionate and dissuasive.

29. Disproportionate sanctions for violation of draft provisions

This risk is created where a draft law establishes sanctions for violations of the draft provisions, which are either too mild or too severe in relation to the said violations. Sanctions which are too severe creates incentives for citizens to engage in corruption to evade them, while increasing the leverage of officials to extract bribes in return for leniency. Sanctions which are too mild may simply reduce compliance with the provisions, including any provisions which have an anti-corruption component.

In addition to adhering to Section 3.3.8 of the Manual, on sanctioning provisions, legal drafters should take care to ensure that it is clear in the draft in what cases and on what grounds sanctions are applicable for violation of the law sanctions for violation of provisions of a draft law are proportionate and dissuasive.

30. Confusion/duplication of legal liabilities for the same violation

This means the establishment of differing liability for violations in different laws, or the establishment of several types of liability (e.g. 'civil, administrative and criminal) for a violation with no clarification of the circumstances in which each should be applied. Confusion/duplication of types of legal liability for the same violation determines corruption risks because it gives excessive discretion to oversight and/or sanctioning authorities to decide on the type of liability or even on whether to apply both types of liability, while the violator is tempted to resort to corrupt methods to influence this decision.

31. Non-exhaustive grounds for liability

These are grounds for liability – that is, the definition of situation in which a citizen bears liability for violations - that is ambiguously formulated or left open, allowing various interpretations of cases/situations when liability arises. Such grounds may create excessive discretion on the part of officials in determining when precisely a person or entity subject to legal obligations has violated them. This creates incentives for corruption both by officials (to extract bribes in return for favourable interpretations of liability provisions) and those subject to the legal provisions (to use corruption in order to secure favourable interpretations by officials).

Concerning risks 30-31, drafters should ensure that any particular liability for a violation is defined unambiguously and that the circumstances in which it applies are clear.

VI. Control mechanisms

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

This is the omission or insufficiency of regulations related to oversight and control over the activities of public authorities in the areas regulated by the draft legal act, especially in areas where risks of corruption or abuse of power by public officials exist. In assessing control mechanisms, consideration should be given to provisions regarding the internal and hierarchic superior controls, reporting provisions. Also, procedures of ensuring the public control in the field are important. Assessing this risk may require consideration not only of the provisions of the specific draft law but also of the institutional and legal context – for example the existence of internal control/audit bodies, complaints mechanisms, conflict of interest provisions, etc.

This risk is frequently encountered when:

- no clear procedures of control on the implementation of the draft's provisions were established;
- the restrictions and/or interdictions for the public official concerning collision between personal interests and public duty are inexistent or inefficient;
- there are no or limited possibilities for conducting parliamentary, judicial or administrative controls;
- provisions regarding public control, through petitioning, complaining, civil society organizations' oversight etc. are lacking.

33. Lack/insufficiency of mechanisms to challenge/appeal decisions and actions of public authorities

This is the omission or insufficiency of internal or external (including judicial) procedures to challenge the decisions and actions of authorities or their representatives relating to the draft legal act. The lack of proper appeal mechanisms clearly makes it easier for officials to abuse their authority when taking actions or making decisions in the area to be regulated by the draft legal act.

This risk may be found together with or coincide with other risks, such as concurrent provisions, legislative gaps, ambiguity of administrative proceedings, lack/insufficiency of access to information of public interest, etc. Where this is so, drafters should follow the guidance provided under those risks.