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Technical Paper:

Annex to the Law Drafting Manual:

Methodology on Avoiding Corruption Risks in Draft Legislation of Albania

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I. Introduction

Among other factors, corruption is favored by imperfect legislation. Public servants draw their powers and influences from laws. When legal regulation of their duties is ambiguous and prone to various interpretation, public servants are tempted to adopt the most convenient interpretation, which can either be the broadest, when confers them an empowerment, or the narrowest, when it confines them to an obligation.

The state and its servants guarantee the enforcement of laws to all members of the society. For this reason, ambiguous regulation of rights, obligations and liability of individuals provides the opportunity for the public servants to doubt the meaning of the law and to adopt various interpretations. In doing so, public servants may act in good faith or may act depending on corrupt motivations offered by the individual or entity interested in the most convenient interpretation of the legal provision.

Observance of the good drafting rules of this Manual prevents many corruption risks of defective legislation. Legal provisions have to be as clear and accurate as possible. Otherwise, they can leave room for abusive interpretation by public servants vulnerable to corruption and encourage individuals to resort to corrupt stimuli to see their rights and legitimate interests fulfilled.

Usually, corruption risks slip in the laws absent any direct intention of the drafters and corruption acts may not necessarily come out as a result of passing such laws. However, these risks create a corruption pressure on public servants and private entities, as they keep the door open for corruption and it is therefore wise to prevent instead of undertaking them.

II. Corruption risks in draft legislation

To recognize the corruption risks in draft legislation, these have been divided into seven categories counting a total of possible 36 risks. These categories are:

- I. Coherence of the draft and its interaction with other legislation
- II. Manner of exercising public authority duties
- III. Public interest and manner of exercising rights and obligations
- IV. Transparency and access to information
- V. Accountability and responsibility
- VI. Control mechanisms
- VII. Language

Bellow is an explanation of all the corruption risks included in these categories, referring to the relevant parts of the Manual, the use of which may prevent such risks in draft legislation.

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

1. Faulty reference provisions

Both external and internal reference provisions are considered faulty when it is hard or impossible to identify the other provisions they refer to or when these refer to inexistent legislation. Identification of faulty reference provisions is easy when the following expressions are used: „in compliance with the legislation in force”, „under the law”, „in the prescribed manner”, „according to the legal provisions” etc. The danger posed by this risk is that the public servant may apply different pieces of other legislation or parts of the draft and may abuse this discretion when the reference is unclear.

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

2. Faulty delegation provisions

These are provisions of the draft that grant to another authority an unjustified competence to establish independently binding rules, regulations, bans and exceptions. Delegation of regulatory competences is unjustified and dangerous when:

- given to the same authority that will enforce, control and/or punish for failure to observe rules it shall set based on the delegation provision, and;
- given to an authority that still does not exist, generating uncertainty in the social relationships regulated by the draft 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. A similar situation is when the law 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 legislator.

Faulty delegation provisions generate other risks: enlargement of discretionary powers, random establishment of deadlines for service provision, excessive requirements for exercise of some rights, etc. Identification of this risk is possible when the following expressions are used: „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 the drafts, please refer to the Manual sections 1.4 and 3.3.7.

3. Concurrent provisions

These are provisions creating a legal conflict. The conflict can appear between the provisions of 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, between codes and other legislative acts.

The legal conflict hinders the correct enforcement of laws and creates preconditions for public servants to enforce the “convenient” provision in a particular situation, as they have the discretion to make an abusive choice of the applicable provision.

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

4. Gaps

These are the legislator's omissions in regulating aspects of social relationships, which emerge from objective reality or other provisions of the same draft.

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

II. Manner of exercising public authority duties

5. Extensive regulatory powers

These are the duties that endow a public authority with the 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.

Usually, the extensive regulatory powers as a corruption risk can be found in draft laws developed by the Government, which allows the authority responsible for the enforcement of this law (immediate author of the draft) 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., the provision containing in the end a derogation providing for the establishment of exceptions other than those envisaged in the law, other rights, obligations, and procedural aspects through departmental acts.

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

6. 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.

The identification of this element is possible by checking 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.

7. 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. The unclear formulation of the powers of the public authority generates the possibility for an official to choose the most convenient

interpretation of his/her powers, without considering other legitimate interests and the spirit of law, that he/she shall comply with in performance of his/her duties.

8. Parallel duties

These are duties of a public authority that are established in the draft, while other similar or identical duties of other public authorities are regulated in the same draft or in other legislation.

Parallel duties create give rise to competence conflicts between the authorities vested with parallel duties or create the risk for both responsible authorities to decline their competence.

Parallel duties also appear in the situations when the adoption of certain decisions is assigned to two or several public authorities (joint decisions). The level of this risk increases when provisions 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.

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

These formulas amount to corruption risk only when formulate as a right what is intended to be an obligation/duty of the public authority or servant.

The danger of this risk lies in the officials’ discretion that appears when using such discretionary descriptions of their competences, which should be established in an imperative manner. This discretion can be used by the officials in an abusive way, so as to avoid performing exactly his/her legal obligations due to the discretionary character of regulation of his /her competences.

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.

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

This is the empowerment of an executive authority with competences to establish rules, to verify their observance and to punish the legal subjects for violation of these rules.

The corruption danger of this element has two sides. On one side, the authority / public servant may abusively promote or damage, with corrupt intentions, the interests of some persons held to apply the rules imposed by this authority. On the other side, the persons bound to comply with the rules set by the authority, can feel easily tempted to corrupt the representatives of this authority in order to avoid control or sanctioning, as all the competences are cumulated by the same authority of the public administration.

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

This is the partial establishment of cases when an authority can refuse to carry out certain actions, to execute certain obligations.

Usually, the list of grounds for the refusal to carry out certain actions by an authority is left open either by using reference provisions to an unspecified legislation or delegation provisions which establish that the list of grounds for refusal is to be completed by an internal administrative act of the public authority.

12. Lack/ambiguity of administrative proceedings

This is either absent or confusing regulation of the administrative procedures managed by public authorities. When the administrative procedures are regulated insufficiently or ambiguously, there arises a dangerous discretion of the responsible official to develop procedural rules which are convenient to his/her own interests, contrary to the public interest.

Lack/ambiguity of administrative procedures appears whenever the text of the draft mentions or implies the existence of a mechanism / procedure, but:

- fails to develop them;
- uses vague reference provisions to unclear legislations that would 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 them;
- establishes discretions of the public officials regarding various aspects of the procedure, without determining criteria for using such discretions by public servants.

An example of how to set up clear administrative procedures is the procedure of entry into force of the draft, which is described in Manual section 3.3.12

13. Lack of specific terms

This is either absent or confusing regulation of administrative terms. Concrete administrative terms are lacking when these are not set, are not clearly articulated or are determined based on confusing or ambiguous criteria.

The lack of concrete terms always leaves room for abusive interpretations on the behalf of the public officials. Thus, there arises the excessive discretion of the public official to assess and determine in each case separately which terms are convenient, both for his own actions, as well as for the actions of other subjects of law to whom these terms are applicable.

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

14. Unjustified terms

These are administrative terms which are too long or too short, 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. At the same time, the pursued interest may be of a cannot-wait nature. 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.

The terms are considered too short when the actions to be fulfilled are too complicated and require longer time in order to be fulfilled than the term set by the draft. Establishment of too short terms for the public authorities lead inevitably to the violation of the terms, while such terms set for natural persons and legal entities – to unjustified complication of their possibilities of making use of their rights and pursuing their legitimate interests.

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

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

This is the legislator's omission to expressly indicate the public authority stipulated in the legal provision, even when the authority is identifiable from the draft context.

The danger of this corruption risk is similar to the establishment of parallel duties and could generate conflicts between the public authorities that simultaneously are assumed to fall under the incidence of the provision (especially when it provides rights and empowerments), or declining by the authorities the competences conferred through law (in case of obligations, responsibilities and tasks). This 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.

This risk will not occur if the prescriptions of Manual section 3.3.5 are followed.

III. Public interest and manner of exercising rights and obligations

16. Exaggerated costs for provision's enforcement as compared to the public benefit

These are the financial and other expenditures, public or private, needed for the implementation of the provision, the amount of which is higher if compared to the advantages obtained by the society or individuals as a result of this provision's enforcement.

The danger of this corruption risk 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 are to be incurred 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.

For planning of balanced costs of the draft, please refer to Manual section 1.5.4.

17. Promotion of interests contrary to the public interest

This is advancing 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.

The danger of this corruption risk resides in the fact that the drafter is using legislation to satisfy one's individual and group interests, despite of and to the detriment of other legal interests. Usually, the promotion of interests represents an abusive favoring of individuals and legal entities to achieve interests and benefits. The reasons for supporting these interests can vary. For instance, support is offered on the basis of subjective reasons, such as kinship, friendship or another kind of affinity with the person responsible of the development of the draft law. Support can be offered for certain political benefits, aimed at influencing for example, a special category of electorate.

Oftentimes, this risk 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 favored individual or group (for example: promotion of drafts of waiver from the general law, in order to exempt specific economic units from the payment of fees; promotion of drafts of forgiving the debts or to remove from the State's exclusive public area an asset that is the of interest for certain companies).

18. Infringement of interests contrary to the public interest

This is damaging 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.

The danger of this risk resides in permanent or temporary infringement of interests of certain individuals or groups, while this sacrifice does not contribute to the attainment of a general, common interest.

Usually, this corruption risk is identified together with abusive promotion of group and individual interests, establishment of excessive requirements for exercise of rights and unjustified limitation of human rights.

19. Excessive requirements for exercise of rights/obligations

These are exaggerated requirements towards persons who make use of their rights within an administrative procedure and/or before an administrative authority. The corruption risk of this element is determined by the fact that when the person finds it too difficult to observe the set requirements, he/she is tempted to employ corrupt methods of ensuring the use of his/her rights.

The requirements for the exercise of rights / performance of obligations of individuals are considered excessive 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 counter-performance of the public authority (such as the establishment of too high fees).

The requirements are considered to be excessive also when their list isn't complete and leaves to the public servant's discretion to establish other requirements for individuals to be able to exercise of their rights / perform their obligations.

20. Unjustified limitation of human rights

This is a restriction imposed by the draft on opportunities to peacefully enjoy individual rights and liberties, established in the domestic and international legislation.

The danger of this risk lies in legislative undermining of guarantees for the exercise of the rights set in the Constitution of the Republic of Albania, special laws and international tools in the area of human rights' protection, when acceptable grounds for the limitation of these rights, are lacking. According to the European Convention of Human Rights and Fundamental Freedoms, the exercise of certain right can be limited in a democratic society when this 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.

Usually, this risk 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.

21. Discriminatory provisions

These are provisions creating a certain situation to the advantage or disadvantage of one subject or of a category of subjects, based on sex, age, property type and other criteria. Provisions are deemed as discriminatory in two cases. A case is when other individuals/entities from the same category or from other categories, with similar merits, are not created similar advantages. The second case is when the subjects for which the draft worsens their situation, and who present similar characteristics with other individuals/entities, are alone treated so by the draft. Frequent examples can be found in amnesty and tax exemptions laws.

The danger of this risk is that it generates feelings of unfairness in the society and throws shadow on the credibility and impartiality of politicians. For these reasons too, following the prescriptions of sections 3.4.13 and 3.4.14 of the Manual is useful.

22. Provisions establishing unjustified exceptions and waivers

These are the provisions-exceptions from the set rule, in absence of justified reasons for 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 corruption risk 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 reference provisions (for example: „except for the cases provided for in the legislation in force”) or with delegation provisions (for example: „except for the cases stipulated in the Regulations of the responsible public authority”).

23. Unfeasible provisions

These are the 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.

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

To avoid unfeasible provisions, Manual section 3.3.6 is useful.

IV. Transparency and access to information

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

This is the absent or insufficient regulation of the person’s possibility to get know or to be informed about data, facts, circumstances of personal or general interest and which normally should be accessible without undertaking special efforts.

The presence of this risk in draft laws means lack of mechanism for offering information of public interest to interested people. Even if this information is of interest to the society it cannot be provided by the authorities because the legislation does not clearly set the obligation to provide it. The consequence of such provisions is maintained “obscurity” over the information that regards 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 is allegedly “hiding something”. Further, he/she might consider that the public servants of the authority could use the information they have access for private aims, contrary to the public interest. On the other hand, the person interested in information can try to employ corrupt means to find out the respective information.

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

25. Lack/insufficiency of transparency in functioning of public authorities

Lack/insufficiency of transparency in functioning of public authorities is a deficiency of the draft threatening the transparency of public authority’s functioning, its activity following to be performed in an obscure framework.

Lack / insufficiency of transparency of the public authority's functioning are identified in case of lack or inadequacy of:

- 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 informational transparency of the public authorities by using informational technologies (web pages and resources, their reduced quality, open databases, interactive forms for the citizens and legal entities to address to the public authority etc.)

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

This is the regulation of some aspects of legislative interest by regulatory acts of the executive authorities which are not made public. This element is identified 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.

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

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 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 are merely declarative and lead to impossibility of enforcing them and therefore to the insufficient accountability of public servants for the failure to observe the draft's provisions.

Oftentimes, the accountability of authorities/officials is stipulated in reference provisions, without even specifying the area of legislation.

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

This is the omission of establishing sanctions for violation of legal provisions, the ambiguity of sanctions for violations or establishment of too severe or too mild sanctions for the committed infringements.

When clear sanctions are lacking or when insignificant sanctions for the violation of draft provisions are set, the risk that emerges is that violators of the draft will realize their impunity for abuses committed while enforcing 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.

29. Mismatch between the violation and sanction

This is establishment of sanctions inappropriate to the danger of the 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 minor violations.

The danger of this corruption risk usually consists in imposing sanctions which are too harsh, leading to inequity of punished subjects, who, being aware of the punishment, can try to employ corrupt methods in order to avoid sanctioning.

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

This means establishment of liability for violations that have already been regulated elsewhere and established other types of liability or concomitant establishment of several types of liability for the same violation.

Confusion/duplication of types of legal liability for the same violation determines corruption risks because it gives too large discretions to the finding and sanctioning authority to decide on the type of liability or even on whether to bring 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 are ambiguously formulated or their list is left open, so that they allow various interpretations of the cases when the liability comes up.

The danger posed by this risk is the too large discretion of the authority that would make the determination of the ground for liability, discretion that the authority can use in order to make the liable individual/entity understand that it is possible to interpret the ambiguous and/or non-exhaustive provision to his/her detriment. 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 aware” of its broad discretion to interpret the draft’s provisions, the unclear grounds for holding liable can serve itself as an indicator of the possibility to settle the respective issue is a “private agreement”.

VI. Control mechanisms

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

This is the omission or inefficiency of the regulations related to oversight and control over the activity of the public authorities in the areas in which personal interests of the public officials to commit abuses are a consideration or in areas of increased interest for the citizens.

While assessing the 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.

This risk is frequently encountered when:

- no clear procedures of control on the implementation of the draft's provisions were provided;
- the restrictions and/or interdictions for the public official get involved in patrimonial and/or financial relations are inexistent or inefficient;
- possibilities of conducting parliamentary, judicial or administrative controls is lacking;
- provisions regarding public control, through petitioning, complaining, civil society organizations' oversight etc. are lacking.

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

This is the omission or inappropriate character of internal or judicial procedures to challenge the public authorities' decisions and actions, as well as of the representatives of these authorities.

The danger of this risk lies in the absolute and indisputable discretion of the public authority to address a certain issue of private or public interest, without the possibility for the interested persons to subject the authorities' actions to control.

This corruption risk can be identified together with other risks, 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.

VII. Language

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

34. Ambiguous expression that allows abusive interpretation

This is the expression from the draft that is unclear or equivocal and thus allows abusive interpretations.

Linguistic expressions become corruption risks to the extent to which they provide opportunities to apply the provision in the preferred interpretation, depending on the interest of the people in charge of implementation and control.

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

35. Use of different terms for 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 synonyms to refer to the same phenomenon and/or by employing the same notion in order to refer to distinct phenomena.

The danger posed by this risk resides in the fact that upon application, the inconsistently used terminology may elicit vicious practices of interpretation of the meaning of the provision, namely:

- treating as distinct phenomena the same phenomenon, as it was called differently in the law; and
- treating as distinct phenomena the same phenomenon, as the law produced a confusion of two different terms in the text of the regulation.

Such faulty provisions may lead to abuses on the behalf of the representatives of both, the public and the private sectors.

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

36. 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 single and uniform meaning.

The danger of this risk is posed by the appearance of diverse practices of interpretation of these terms, practices which can also be abusive, especially when they imply the application of the provisions containing such terms by the public authorities. Nevertheless, it has to be stated that such defective formulations may be equally used by private individuals/entities in order to advance illegitimate interests.

The proper use of new terms is presented in Manual sections 3.3.4, 3.4.2-3.4.5.

III References

Developing these Annex, the following sources have been used:

- Theoretical Practical Guide for the performance of anti-corruption review of drafts of legislative acts and other legal acts, developed by the Centre for the Analysis and Prevention of Corruption, March 2007, Lilia Ionita, Corneliu Gurin, Ion Creanga and Veaceslav Mirza.
- "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", Quentin Reed.
- Centre for Combating Economic Crimes and Corruption 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.
- "Efficiency of the Corruption Proofing Methodology on Draft Laws and Normative Acts Adopted by the Parliament of Moldova between 2006 and 2009" Research Study, Chisinau, July 2009, Galina Bostan, Cojocaru Cristina, Corneliu Gurin and Lilia Ionita.