



Support to the anti-corruption strategy of Azerbaijan
(AZPAC)

**Technical Paper on Typology of corruption risk factors in legal regulations
or draft legal regulations**

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Introduction

The following is a proposed outline of corruption risk factors that may be found in legal regulations (laws, decrees and other secondary legislation). The proposed typology may serve during the legislative process as a basis for conducting analysis of existing laws or draft laws in order to minimise the risks of corruption created by those laws.

Corruption risk factors are characteristics of a legal provision that may increase the risk of corruption occurring during the implementation of a law, or are corrupt by their nature because they promote the interests of particular interests at the expense of the public interest. The factors listed here are based on methodologies drafted in Russia and Moldova for assessing corruption risks in draft laws, with a clearer structure and some changes and additions by the Council of Europe expert (Quentin Reed).

Not all of the risk factors listed here will always give rise to corruption, but even where they do not do so they are nevertheless problematic. In this sense, in the process of drafting and approving draft laws the corruption risk analysis should not be conducted in isolation, but should be seen as an integral component of the broader process of assessment of draft legal acts.

Outline Typology

1. Justification of legal act

- Lack of a comprehensive justification for a legal act
- Promotion by the legal act of the interests of particular groups or individuals, or damage to the interests of particular groups or individuals, without a public interest justification
- Inclusion of substantive provisions that are unrelated to the subject of the legal act
- Failure to provide a clear estimate of the cost and financial impact of the draft legal act

2. Ambiguous linguistic formulation

- Provisions in the draft legal act which have unclear or ambiguous meaning
- The use of terms or expressions which have not been used before
- The use of different terms within the same draft legal act to refer to the same thing

3. Conflicts of legal provisions

- Conflicts of provisions of the draft legal act with other legal acts in force which are not resolved by existing legal provisions for the resolution of such conflicts.
- The presence of primary legal norms within a draft regulatory act (by-law)

4. Allocations of powers, competencies and duties

a) Faulty reference provisions

- Reference – in order to set a rule or determine criteria – to legislation or regulation that is not specified
- Reference – in order to set a rule or determine criteria – to legislation or regulation that does not exist

b) *Other*

- Establishment of parallel duties

5. Rules and criteria for implementation

a) *Unjustified regulation*

- Provisions that impose regulation without a public interest justification for such regulation

b) *Excessive discretion*

- Allocation of authority to a regulator or executive body to determine rules/criteria governing procedures which that same body is responsible for implementing
- Allocation of authority to apply a provision (take decisions) without imposing clear criteria for such a decision
- Failure to state clear deadlines for decisions
- Establishment of excessively long deadlines
- Allocation of authority to institution to extend deadlines without restriction or duty to provide a clear justification for such extensions
- Establishment of non-exhaustive, ambiguous or subjective grounds for an authority to refuse to conduct certain actions (for example process an application or request)
- Failure to require competitive procedures for the allocation of contracts, licences, concessions etc

c) *Establishment of excessive requirements for persons to fulfil their rights*

- Establishment of conditions which are generally very difficult to fulfil (for example requirement of costly verified documents that are not relevant to the matter).
- Conditions that are not listed exhaustively – i.e. allow for extra arbitrary requirements to be imposed upon persons by the public authority.

6. Access to information

- Absence or inadequacy of provisions and procedures to ensure that persons are informed of all their rights and duties relating to a draft legal act
- Absence or inadequacy of provisions to ensure access of persons to information they need to fulfil their legal rights or duties
- Absence or inadequacy of provisions and procedures to ensure that the general public has access to information on the implementation of the draft legal act

7. Control mechanisms

a) *Supervision and control*

- Failure of draft legal act or other legal acts to establish clear procedures for the supervision of the implementation of the draft legal act

b) *Appeal and judicial review*

- Absence or inadequacy of internal procedures or judicial procedures for appeal against decisions taken under the authority of the legal act

8. Responsibility and sanctions for violations

- Failure to establish clear responsibility of specific persons or authorities for violations of provisions of the draft legal act
- Failure to establish clear and proportionate sanctions for violations of provisions of the draft legal act