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AVENUES FOR ENHANCING CORRUPTION PROOFING IN MONTENEGRO

SITUATION ANALYSIS AND ROADMAP FOR DEVELOPMENT

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**Government of
Montenegro**

 **Norway**



Introduction

Agency for the Prevention of Corruption of Montenegro (hereafter Agency) is empowered by the Law on Prevention of Corruption to conduct CPL. After implementing the Methodology of CPL which is currently in-force now has arrived momentum to update it in order to enhance procedural guidelines for prioritization of laws subject to CPL and to update the checklist for detecting risks of corruption in legal acts. To do that, experience of number of countries were considered and was analyzed legislation and practice of relevant local institutions in Montenegro. Based on the conducted analysis was produced this paper.

This paper is composed from the following parts:

1. Situation Analysis (legislation and practice) where are presented main and important legislative and practical aspects relevant to CPL;
2. Procedural Guidelines on Prioritization of Legislation within the framework of CPL

Situation Analysis (legislation and practice)

The power of the Agency to conduct CPL is provided in article 78 of the Law on Prevention of Corruption. According to it, among the responsibilities of the Agency are:

- Taking an initiative to amend the laws, other regulations and general acts, in order to eliminate the possible risk of corruption or to bring them in-line with international standards in the field of anti-corruption;
- Giving opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption.

The CPL conducted by the Agency results in issued opinions which are not legally binding within the context of Montenegro, considering the preventing character of the Agency. The Agency posts issued opinions on own official website and sends to the relevant actor which has authored the draft legislative piece. Opinions of the Agency usually are structured in the following format: *Short summary; Explanations* which are divided into Procedure, Analysis of the legal act at stake; *Recommendations and Conclusions*. Issued opinions are well-elaborated and of analytical nature and mimic judicial verdicts and decisions. Up to October, 2021 the Agency issued 23 opinions.

According to EC report on Montenegro for 2020 "Since its establishment, the ACA submitted to the line ministers 17 non-binding legal opinions on draft legislative acts in the area of its competence. Its opinions were taken into account for 4 legislative acts, 4 legislative processes are currently ongoing, and in eight cases, the ACA 29 recommendations were not reflected in the final version of a legislative act".¹

¹ The report is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:520205C0353>

In terms of Methodology, the Agency uses Methodology which was developed back in 2018 by Tilman Hoppe within technical assistance framework received by Regional Anti-Corruption Initiative (RAI). This Methodology is largely in-line with seminal study conducted by Tilman Hoppe in 2014-2015 "Anti-corruption Assessment of Laws in South East Europe".²

Key Actors

The Key Actors in terms of recommendations which will be elaborated in the chapter on "Avenues for Enhancement" are:

1. Agency for Prevention of Corruption;
2. Secretariat for Legislation;
3. Ministry of Finance;
4. The Government;
5. Legislative Committee of the Parliament;
6. Anti-corruption Committee of the Parliament.

Legislative Process in Montenegro

The legislative process in Montenegro is quite sophisticated and detailed. In terms of relevant and importance to CPL there are 4 procedures present a particular importance:

1. Harmonization with the Legal Order of Montenegro (Legal and Technical Rules for Legal Drafting);
2. Harmonization with the Legal Order of EU (EU Acquis Communautaire);
3. Regulatory Impact Assessment;
4. Public consultation.

Adoption of laws is regulated by the Rules on Procedure of the Parliament³ of Montenegro and the Constitution⁴. Adoption of law undergoes 3 readings and it is described in details at the official website of the Parliament.⁵

² See at: <https://www.rcc.int/pubs/28/anti-corruption-assessment-of-laws-in-south-east-europe-corruption-proofing>

³ See at: <https://api.skupstina.me/media/files/1607338194-zakon-o-parlamentu-pravni-osnov-i-organizacija-rada-parlamenta.pdf>

⁴ <http://www.predsjednik.me/dokumenta.php>

⁵ See at: <https://www.skupstina.me/en/parliament/legislative-procedure/adopting-laws>

A proposal for the law is considered in three stages, i.e. three "readings". *First reading:* Prior to its consideration in the sitting of the Parliament, a proposal for a law is considered by responsible committees (Legislative Committee and lead committee), as well as by the committee responsible for the budget if the proposal for a law incurs liabilities for the budget of Montenegro. Committees, which in addition to the lead Committee consider the proposal for a law, submit their opinions to the lead Committee, which considers thereof and submits the report to the Parliament containing the position on the opinions of those committees. The lead committee may propose the Parliament to

In the case of other legal acts and draft laws authored by the Executive branch of the Government, the procedure is regulated the Rules of Procedure of the Government. According to article 14 of these Rules there are 4 permanent working bodies in the Government:

1. Commission on Political System, Internal and Foreign Policy;
2. Commission on Economic Policy and Financial System;
3. Commission on Personnel and Administrative Affairs;
4. Commission for distribution of part of the budget reserve funds.

The scope of the functions of the first 2 commissions (on Political System, Internal and Foreign Policy and on Economic Policy and Financial System) includes consideration of draft laws, other regulations and general acts and other materials.⁶ The Commission submits to the Government a report on the considered material, which contains findings and assessments and proposed conclusions⁷. The Commission may propose to the Government in the report that the material not be discussed at the Government session (for verification). The draft conclusion is submitted in a form in which the Government should adopt it and contains precisely stated amendments that need to be made.

According to article 32 of the same Rules *proposer of a law, other regulation or general act is obliged to make them in accordance with the legal and technical rules determined by the Secretariat for Legislation*. According to article 33 in the process of preparation of laws and other regulations, the proposer is obliged to conduct an analysis of the impact assessment of regulations (RIA) *in accordance with the act of the*

adopt the proposal for a law in whole, adopt it in the wording amended in relation to the wording submitted by the proposer or not adopt the proposal for a law. *Second reading:* Second reading begins by considering the proposal for a law in the sitting of the Parliament, i.e. by a general debate on the proposal for a law, which encompasses the discussion on the: constitutional grounds; reasons for adoption of the law; its compliance with European legislation and ratified international treaties; substance and effects of proposed solutions and estimated funds required from the budget for enforcement of the law. After the completion of the general debate, the Parliament decides on the proposal for a law in general and may decide to accept or not to accept the proposal for a law in general. If the proposal for a law is not accepted in general, such proposal for a law will not be subject to detailed debate or decision making. If the Parliament adopts the proposal for a law in general, before proceeding to detailed debate on the proposal for a law, the President of the Parliament invites responsible committees to additionally consider the proposal for a law and submitted amendments, and submit a relevant report. If in the general debate there are no disputes regarding the constitutional grounds or the need for adoption of the law, and there are no amendments submitted to the proposal for a law or submitted amendments have been accepted by the proposer of the law, the detailed debate and decision making with regard to the law as a whole may proceed immediately after the adoption of the proposal for a law in general. *Third reading:* After additional debate in committees and submission of the report thereon, the Parliament proceeds to detailed debate on the proposal for a law, which includes the debate on the solutions in the proposal for a law, submitted but not reconciled amendments and positions and proposals by the committees. After the completed detailed debate, the vote will proceed on amendments not making an integral part of the proposal for a law, and then on the proposal for a law as a whole. After the adoption, the law is sent to the President of Montenegro for the purpose of its promulgation. The President may return the law to the Parliament to be voted on again, but he is obliged to promulgate the law which has been re-adopted. Following the promulgation, the law is published in the Official Gazette of Montenegro.

⁶ Articles 15 and 16 of the Rules of Procedure of the Government

⁷ Hereinafter see *ibid*, article 23

Ministry of Finance. If the proposer assesses that in the process of preparation of a law or other regulation, RIA should not be performed, he is obliged to explain it separately.

According to article 35 the proposer is obliged to submit, along with the draft law, *a report on the public hearing*, which it conducted in accordance with the regulation of the Government. The proposer is obliged to, with the draft law on which it did not conduct a public debate, submit an explanation why the public debate was not conducted. In this case, as well as on the occasion of considering proposals for other acts, strategic and planning documents on which no public debate was held, the Government *may* determine the bill, other act or document as a draft and instruct the proposer to conduct a public debate.

According to article 40 of the same Rules Along with the draft law, other regulation or general act, the proposer is obliged to submit:

- Opinion of the Secretariat for Legislation on the harmonization of the proposed act with the Constitution and the legal system of Montenegro;
- A statement on the compliance of the draft act with the relevant regulations of the European Union, with the accompanying table of compliance, made in accordance with the instructions of the Office for European Integration and confirmed by that office;
- Opinion of the Ministry of Justice on the draft act regulating the procedure before the courts, as well as on the provisions of the draft act which regulates sanctions and misdemeanor proceedings;
- Opinion of the Ministry of Public Administration on the proposal of the act regulating the procedure before state bodies, organizations state administration and local self-government;
- The opinion of the State Aid Control Commission for a draft act containing certain decisions regarding the granting of any types of state aid;
- RIA form, made in accordance with the act of the Ministry of Finance, as well as the opinion of the Ministry of Finance on the position of the proposer that it is not it is necessary to perform RIA, ie whether the RIA conducted by the proposer is adequate;
- Opinion of the Ministry of Foreign Affairs on the draft law on ratification of an international agreement, on the proposal of the basis for conclusion of an international agreement and materials referred to in Article 39 of these Rules of Procedure;
- Opinion of the Personnel Administration on the proposal of the rulebook on internal organization and systematization of state administration bodies;
- Opinion of the Office for Support of the National Authorizing Officer on the proposal of regulations governing the organization and the manner of work of the state administration and the proposal of the rulebook on internal organization and systematization of state administration bodies in the part which determines the competence of state administration bodies regarding the use of funds under the Instrument for Pre-Accession Assistance of the European Union, ie jobs support of the European Union.

Along with the draft law and other regulations, as well as strategic and planning documents, the proposer is obliged to *submit a report* on inter-ministerial consultations, which contains the views, proposals and opinions expressed in the consultations, *unless those consultations were conducted during a public hearing, which is specifically stated in the report on the public hearing*. Along with the draft law, the proposer is obliged to *submit an analysis of the situation, phenomena and problems in the area regulated by the law*. Along with the draft law and other regulations, as well as strategic and planning documents, the proposer is obliged to submit *a proposal for communication theses*.

The Ministry or other administrative body to which the draft law, strategic or planning document has been submitted for opinion, is obliged to inform the proposer in writing about its views, within a period that

may not be longer than 14 days⁸. For proposals of other materials, the deadline for submitting opinions is 5 days. The Ministry of Finance is obliged to give an opinion on the RIA form, which refers to the draft law or strategic document, to the proposer within a period that cannot be longer than 21 days, and for other regulations within a period that cannot be longer than 14 days.

According to article 42 of the same Rules draft law, other regulation and general act, before being submitted to the Government, shall be harmonized with the positions of the Secretariat for Legislation and the ministries from which opinions were previously obtained. If the proposer does not accept the positions of the Secretariat for Legislation and the ministries contained in their opinions and if they do not harmonize the positions on them in direct cooperation, the proposal of that act cannot be put on the agenda of the commission until, at the request of the proposer, the Government so decides.

Harmonization with the Legal Order of Montenegro (Legal and Technical Rules for Legal Drafting)

Harmonization with the Legal Order of Montenegro is regulated by Legal and Technical Rules for Legal Drafting adopted by the Secretariat for Legislation which is an administrative body.⁹ It is composed from 3 sections: Legislative Drafting; Language, Style and Manner of Writing Regulations; Special rules related to amendments and corrections to legislation. It must be mentioned that objectively and reasonably it can be observed some repetition between the Methodology on Corruption Proofing and these Rules.

For the year of 2020, the Secretariat processes in total 996 legal acts out of which 58 draft laws, 644 bylaws (decrees, decisions, ordinances, instructions and orders), 294 other acts (collective agreements, plans, programs and etc.) and initiatives/proposals for initiating proceedings for the review of constitutionality and legality.¹⁰ The Secretariat provided 654 opinions with remarks and suggestions out of which 104 on draft laws, 525 on bylaws and 24 on other legal acts and 627 final opinions for 54 draft laws/proposals, 544 on bylaws and 29 on other acts.¹¹

Acting in these cases, the Secretariat has repeatedly given an opinion (remarks, proposals and suggestions) on the same law and certain bylaws, so that it has given a total of: - 654 opinions with remarks and suggestions in direct cooperation or in writing (104 on draft laws, 526 on bylaws and 24 on other acts) and - 627 final opinions (54 on draft laws / proposals, 544 on proposals bylaws and 29 to other acts).

Harmonization with the Legal Order of EU (EU Acquis Communautaire)

EU Acquis Communautaire is conducted in accordance with the Guidelines annexed to. The Guidelines is composed from 2 sections: EU Legal Order and Harmonization of Montenegrin Legislation with the Legal Order of the European Union. In the first section (EU Legal Order) the Guidelines provide some basic information about EU Law such as sources of law and basic principles of the EU legal order. In the second

⁸ Hereinafter see Article 41, the Rules of Procedure of Government of Montenegro

⁹ See the official website of Secretariat <https://szz.gov.me/sekretarijat> and classification of the Secretariat at the official website of the Government of Montenegro <https://www.gov.me/en/organizational-units>

¹⁰ Report on the Work of the Secretariat for Legislation for 2020, page 1. Available at: <https://szz.gov.me/vijesti/244272/izvjestaj-o-radu-Sekretarijata-za-zakonodavstvo-u-2020-godini.html>

¹¹ Hereinafter see *ibid*, pages 1-2

section (Harmonization of Montenegrin Legislation with the Legal Order of the European Union) the Guidelines provide Procedure of harmonization of domestic legislation, Transposition of the Legal Acts of the European Union in domestic legislation, Monitoring. The requirements on conducting EU Acquis are established in the Rules of Procedure of the Government (article 40), Rules of Procedure of Parliament (article 140).

Regulatory Impact Assessment

The requirement to conduct RIA stems from article 33 and 40 of the Rules of Procedure of the Government. According to article 33 It is obligation of proposer of regulations to conduct RIA in the process of preparation of laws and other regulations, in accordance with the act of the Ministry of Finance of Montenegro. According to article 40 of the same Rules, along with the draft law, other regulation or general act, the proposer is obliged, among other things, to submit the RIA form, made in accordance with the act of the Ministry of Finance, as well as the opinion of the Ministry of Finance as on whether the RIA conducted by the proposer is adequate. Besides, the Ministry of Finance also issued an Instruction on Compiling Report on RIA.

RIA in Montenegro consists from 7 parts¹²:

- Defining the problem;
- Objectives;
- Options (identified regulatory and non-regulatory options for achieving the planned goals);
- Impact (analysis of the effects of each identified option in terms of its economic, social and other impacts including administrative costs);
- Fiscal Impact assessment;
- Consultation with relevant stakeholders;
- Monitoring and evaluation activities related to the proposed regulation.

During 2020, the Ministry of Finance issued a total of 216 opinions: for 5 regulations, the proposers, in accordance with Article 33, paragraph 2 of the Rules of Procedure of the Government of Montenegro, submitted an explanation that they should not be performed by RIA¹³. Out of 216 acts, 34 referred to laws, 104 to bylaws and 78 to other strategic documents (strategies, action plans, programs, agreements, information, etc.)

Public Consultations

Public consultations in Montenegro is regulated by the Law on State Administration and "Decree on the election of representatives of non-governmental organizations to the working bodies of state administration bodies and the conduct of public hearings in preparation law and strategy".

¹² Report on the Quality of Application of RIA in Montenegro for 2020, pages 20-29, available at <https://www.gov.me/dokumenta/db09dd98-7c71-4193-9123-f5c85e41ea15>

¹³ Hereinafter see *ibid*, page 12

According to article of the Law on State Administration "When drafting laws and developing strategies ministries shall, for the purpose of consulting the interested public, organize public consultation process". According to the same article public consultations are not mandatory:

- When a law and/or strategy regulate the issues from the area of defence and security and annual budget;
- In extraordinary circumstances, emergencies or unforeseeable circumstances;
- In case of minor amendments to laws which do not regulate certain issue in a substantially different manner.

According to article 10 of this Decree public debate in the preparation of laws and strategies is conducted: 1) by consulting bodies, organizations, associations and individuals (the interested public) in the initial phase of preparation of the law and strategy; 2) by organizing a public debate on the text of the draft law or strategy. According to article 11, a Ministry publishes on its website and e-government portal, within 15 days from the day of the adoption of the annual work program, a list of laws and strategies on which it will conduct a public debate, a brief explanation of the need for legislation or strategy and other information from importance for the preparation of laws or strategies.

Consultation with the interested public is carried out after the publication of the public call on the website of the Ministry and the e-government portal and consultation implies giving initiatives, proposals, suggestions and comments in the initial phase of law preparation or strategies¹⁴. The time duration for submission of comments, suggestions and etc. shall be at least 15 days.

However, a public debate on the text of the draft law or strategy is conducted through organizing round tables, forums, presentations and etc. and input can be in a form of submitting remarks, proposals and suggestions in written or electronic form.¹⁵ In such cases, the event shall be attend by an authorized representatives of a ministry. In such cases of public debate, (debate on the text) it begins on the day of publishing the public invitation on the ministry's website and e-government portal and lasts from 20 to 40 days, depending on the importance and complexity of the matter that is the subject of the draft law, or the strategy under public discussion¹⁶. Also, most importantly, in the event of a public hearing on the text of the draft law, RIA analysis is also published. At the end of public hearing, within 15 days from the expiration of the public hearing, a Ministry prepares a report on the conduct public hearing and posts it at own website and on e-government portal.¹⁷

¹⁴ Article 12, Decree on the election of representatives of non-governmental organizations to the working bodies of state administration bodies and the conduct of public hearings in preparation law and strategy

¹⁵ Article 14, *ibid*

¹⁶ Article 15, *ibid*

¹⁷ Article 18, *ibid*

Procedural Guidelines on Prioritization of Legislation within the framework of CPL

Currently, the factors which is employed by the Agency for prioritization of laws for subjecting to CPL can be divided into 2 groups: General and Individual. Within the General Factors the following aspects are included:

1. Laws relates to areas which are typically prone to corruption (e.g. procurement, political finance and etc.);
2. Laws which include corruption prone mechanisms (e.g. award of finance advantages, issuing licenses and permits and etc.);
3. Laws relate to areas where the perception of corruption is high according to national and/or international surveys;
4. Laws that national anti-corruption action plan prioritizes for reform.

Within Individual Factors following aspects are covered:

1. Media or civil society reports about specific corruption problems;
2. Notification by other authorities on corruption problems;
3. Large financial political donations by an interest group to a concrete sector;
4. Draft law is subjected to strong lobbying efforts by interest groups;
5. Authors of draft law face conflict of interest;
6. Reports by law enforcement or media.

The current methodology provides that the Agency should at least investigate through simple research in order to ascertain whether there actually were any Individual Factors mentioned above.

Besides, current methodology also divides legislation into public laws and private laws and abovementioned General and Individual Factors relate to Public Laws. Moreover, the methodology mentions that CPL in regard to private laws should be conducted only in selected cases, whenever there is a regulatory corruption risk, in particular:

1. Accounting and auditing rules for companies (which could be abused to hide bribery payments);
2. Substantive or procedural rules on the transfer of property (that could be abused to raid someone else's assets).

In addition to General Factors it is suggested to add the following aspects:

1. Substantial change of public administration and structures of state institutions;
2. Substantial alterations in electoral mechanisms;
3. Substantial political and economic impact on ethnic minorities;
4. Substantial transformation of rules on formation, functioning and funding of political parties;

5. Financial aid or other financial instruments of similar nature of substantial amount (more than 10.000.000 EUR) which is being provided to Montenegro by regional organizations, international organizations or foreign countries.

Concerning Individual Factors it is suggested to add the following aspects:

1. Reports from whistleblowers;
2. Information received by international and regional organizations.

At the end, the General Factors will be the following:

1. Draft law relates to areas which are typically prone to corruption (e.g. procurement, political finance and etc.);
2. Draft law includes corruption prone mechanisms (e.g. award of finance advantages, issuing licenses and permits and etc.);
3. Draft law relates to areas where the perception of corruption is high according to national and/or international surveys;
4. Draft law that national anti-corruption action plan prioritizes for reform;
5. Substantial change of public administration and structures of state institutions;
6. Substantial alterations in electoral mechanisms;
7. Substantial political and economic impact on ethnic minorities;
8. Substantial transformation of rules on formation, functioning and funding of political parties;
9. Financial aid or other financial instruments of similar nature of substantial amount (more than 10.000.000 EUR) which is being provided to Montenegro by regional organizations, international organizations or foreign countries.

As about Individual Factors they will be the following:

1. Media or civil society reports about specific corruption problems;
2. Notification by other authorities on corruption problems;
3. Large financial political donations by an interest group to a concrete sector;
4. Indications that draft law is subject to strong lobbying efforts by interest groups;
5. Authors of draft law face conflict of interest;
6. Reports by law enforcement;
7. Reports from whistleblowers;
8. Information received by international and regional organizations.

It would be recommended to divide these 17 joint criteria into 2 groups: Pressing Priority and General Priority draft laws subject to CPL.

In the group of Pressing Priority it is recommended to include:

1. Indications that draft law is subject to strong lobbying efforts by interest groups;
2. Authors of draft law face conflict of interest;
3. Reports received about specific corruption problems from the side of media or civil society;

4. Reports received by law enforcement bodies;
5. Information received by international and regional organizations.

The process of deciding as on whether the draft law relates to one of the General Factors mentioned from 1-4 is simple check. As about General Factors 5-9 the process for decision is the following:

1. if the draft provides for change of structures, functions, interactions to a degree which overall change the current state of affairs;
2. If the draft does not provide for change of structures, functions, interactions to a level which it should according to existing pressing circumstances in the country which for an independent and objective observer shall be provided in order to secure democracy, rule of law, social development in the country.

In regard to Individual Factors the process of decision-making is self- evident and does not need further elaboration.

2021

Corruption Proofing

COMPARATIVE NOTE ON SELECTED COUNTRIES
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Government of
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Introduction

There are two sorts of corruptions — one when the people do not observe the laws; the other when they are corrupted by the laws: an incurable evil, because it is in the very remedy itself.

(Charles de Secondat Montesquieu, The Spirit of Laws, Book VI)

This quote is from 18th century French philosopher Baron de Montesquieu. Succinct and to the point. According to this great French mind, there are two situations: There are laws and people do not observe them; there are laws that are by themselves corrupt and are corrupting people. Monsieur Montesquieu can be considered as Founding Father of Corruption Proofing of Legislation (CPL).

Surely, nowadays CPL as evolving discipline got more details and peculiarities. CPL was inspired by the crime risk assessment mechanism to crime-proof EU law¹ and which is special form of Regulatory Impact Assessment (RIA).² If RIAs assess the all sorts of effects a law can have on a society at large, the CPL is specifically designed for anti-corruption matters. CPL is a relatively new strategy in anti-corruption toolkit³ and evolving discipline.⁴ Sources of international standards on CPL are scarce; rather there are best practices found in countries, and there is a seminal study produced by a leading international expert on CPL, Dr. Tilman Hoppe. In general, CPL can be considered to be a legislative technique with special focus on anti-corruption risks.

Jeremy Pope, a well renowned International Anti-corruption Expert in 2006 wrote: *"Corruption can occur in myriad places, and every piece of proposed legislation should be scrutinized to ensure that it is not creating circumstances that lend themselves to corruption. In other words, every draft law should be corruption-proofed."*⁵

In terms of defining CPL there is no agreed definition of it. This is so partially because of the fact that CPL is still evolving discipline. According to Dr. Hoppe, a person who up to now contributed the most to the formation of CPL, *"Anti-corruption assessment of legislation is a review of the form and substance of drafted or enacted legal rules in order to detect and minimize the risk of future corruption that the rules could facilitate."*⁶ This definition covers anti-corruption assessment of legislation at large, as it relates to

¹ Pasculli, L. (2019), "Seeds of systemic corruption in the post-Brexit UK", *Journal of Financial Crime*, Vol. 26 No. 3, p.713

² See *ibid*, page 713 and Tilman Hoppe (2014), *Anti-corruption Assessment of Laws ('Corruption Proofing')*, Regional Cooperation Council, Sarajevo, p. 14

³ <https://globalanticorruptionblog.com/2018/08/03/corruption-proofing-statutes-and-regulations-the-next-big-thing-in-anticorruption-strategy/>

⁴ Tilman Hoppe (2014), *Anti-corruption Assessment of Laws ('Corruption Proofing')*, Regional Cooperation Council, Sarajevo, p. 12

⁵ J. Pope in "The Role of Parliament in Curbing Corruption (edited by Staphenurst, Johnston and Pelizzo)", Washington, 2006. P. 65

⁶ Tilman Hoppe (2014), *Anti-corruption Assessment of Laws ('Corruption Proofing')*, Regional Cooperation Council, Sarajevo, p. 12

drafted or enacted legal rules; it is aimed at minimising the risk of future corruption that the rules can produce.

There are not a lot of countries that conduct CPL. In this paper, are presented examples of several countries which conduct CPL: South Korea, Moldova, Lithuania, Ukraine, Serbia, Russia, North Macedonia, , Albania, Latvia, Slovenia and Bulgaria..

South Korea

In South Korea CPL is called Corruption Risk Assessment (CRA). It was introduced in 2006 and is conducted by the Anti-corruption and Civil Rights Commission (ACRC).⁷ It is a preventive tool which identifies and reduces corruption risks in bills, laws and regulations. The ACRC has a clear legal standing on conducting CRA which is provided in article 28 of the 'Act on Prevention of corruption and the Establishment and Management of the Anti-corruption and Civil Rights Commission'.⁸ In particular, it states: '(1) The Commission may analyse and examine the following statutes, etc. for corruption-causing factors, and then may recommend the heads of competent institutions having jurisdiction thereof to make improvement thereon; 1. Acts, Presidential Decrees, Ordinances of the Prime Minister, Ordinances of the Ministries; 2. Administrative rules such as directives, established rules, public notices, or publications made under delegation by statutes; 3. Municipal ordinances and Rules; 4. Internal rules of public institutions designated under Article 4 of the Act on the Management of Public Institutions and local government-invested public corporations and local public agencies established under Articles 49 and 76 of the Local Public Enterprises Act, respectively.' Furthermore, the Enforcement Decree of ACRC clearly provides a group of four factors to consider while conducting CRA.⁹

Table 1. Group of factors used by ACRC

Group of factors	Questions related to factors
The possibility of causing corruption	- Whether a discretionary power, if any, is likely to induce corruption. - Whether the criteria for application of statutes and so on, and the procedures for exercising powers, are objective and concrete. - Whether adequate anti-corruption measures exist to regulate the exercise of discretion.

⁷ Kim and Lee (2018), *Introduction to Korea's Corruption Risk Assessment: A Tool to Analyze and Reduce corruption risks in Bills, Laws and Regulations*, UNDP, Seoul, page 15

⁸ South Korean Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission

⁹ Article 30 of South Korean Enforcement Decree of the Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission of South Korea.

The ease of compliance with statutes and other legal acts	• Whether statutes (and so on) include any provisions, the observance of which cannot be expected from citizens, enterprises, organisations, and so on. • Whether the details and degree of punishment for violating statutes (and so on) are appropriate. • The possibility of giving preference and the appropriateness and reasonableness of preferential treatment.
The transparency of administrative procedures	• If participation in the administrative process is required, whether the opportunity therefore is guaranteed and relevant information is sufficiently available. • Whether the procedural preparations, procedure and period of processing, the result of processing, etc. are predictable.
Whether other possibilities of causing corruption exist	Not applicable

Thus, a wide range of legal acts falls under CRA:

1. Acts and subordinate statutes (laws, presidential decrees, prime ministerial/ministerial decrees).
2. Administrative rules (instructions, established rules, notifications, announcements, guidelines).
3. Municipal regulations (ordinances, rules).
4. Internal rules, bylaws of the public service-related organisation (company rules, articles of association).¹⁰

In terms of draft or revised acts and subordinate statutes, ACRC conducts CRA before the closing date of the pre-announcement of the legislation (generally within 40 days).¹¹ It must be noted that ACRC does not conduct CRA for bills that are initiated by MPs; it only relates to bills initiated by the Executive. In their methodology of CRA, ACRC uses four assessment area and 12 criteria grouped under the four assessment areas. The criteria are presented in the table below.¹²

¹⁰ Kim and Lee (2018), *Introduction to Korea's Corruption Risk Assessment: A Tool to Analyze and Reduce corruption risks in Bills, Laws and Regulations*, UNDP, Seoul, page 23.

¹¹ Hereinafter see ibid, pages 24-25.

¹² ACRC (2020), *Anti-corruption Report*, pages 33-34.

Table 2. CRA criteria and their details

Assessment Area	Criteria	Details
Compliance	Rationality of the burden of compliance	To determine whether the burden of compliance - such as cost or sacrifice that should be paid by the public, companies, or organisations, etc. in order to comply with duties stated in laws - is rational and not excessive compared to other similar laws.
	Adequacy of sanctions	To determine whether the content and level of sanctions on the violation of laws, etc. is adequate and not excessive compared to similar laws.
	Possibility of preferential treatment	To determine whether preferential treatment or a benefit could be created for a specific company, organisation, or person due to the laws, etc.
Execution	Concreteness/objectiveness of discretionary regulations	To determine whether laws related to discretionary power, scope, standard, and procedure, etc. are stated in a clear, definite, concrete, and objective manner; and to determine if there is a controlling tool for the prevention of excessive discretionary power.
	Transparency/accountability of entrustment/commission	To determine whether entrustment/commission conditions, scope and limitations, and selection procedures, etc. are clearly defined, and to determine if there is a managing/monitoring tool for securing accountability when consigning authority and duties to related public organisations or private associations.
	Possibility of budget leakage	To determine whether there is any overlap in financial aid - such as national subsidies due to other laws - or whether there is any budget leakage due to uncertain standards for aid, and to determine if there is any managing/monitoring tool for the prevention of budget leakage.
Administrative procedures	Accessibility	To determine whether sufficient opportunities are given to stakeholders - including the public, companies, and organisations - during administrative procedures such as policymaking and objection, and to check whether the

		representativeness of stakeholders is secured when collecting opinions.
	Openness	To determine whether content, procedure, and related information are sufficiently open to stakeholders and the general public.
	Predictability	To determine whether civil petitions can easily identify and predict necessary documents, actions, administrative procedures, handling periods, and results.
Corruption Control	Possibility of conflict of interest	To determine whether there is any standard, procedure, or post-control tool to prevent private interest during official works.
	Robustness of anti-corruption mechanisms	To determine whether it is necessary to adopt anti-corruption tools or laws in order to prevent corruption that may arise while implementing laws or policies.
	Potential to cause passive administration	To determine whether lack, etc. of legal provisions may cause passive work practice including public officials' non-performance or dereliction of duty, thereby infringing the right and interest of the public or incurring a financial loss to the nation.

During the period of 1 April 2006 to 31 December 2019, the ACRC conducted CRA for a total of 20,542 laws and regulations being legislated or revised, and identified 5,880 corruption-causing factors in 2,413 laws and regulations.¹³

Moldova

In Moldova, CPL is being conducted by the National Anti-corruption Center (NAC) that is the independent anti-corruption institution of Moldova.¹⁴ In Moldova, CPL is called Anti-corruption Expertise of Legal Acts. Moldova was the first country to develop a comprehensive methodology back in 2005,¹⁵ although it was developed by CSOs.¹⁶ In 2008 an NGO developed a software for corruption proofing, that was also adjusted for the NAC. In 2017 both the software and methodology used by the NAC for

¹³ See *ibid*, page 35

¹⁴ OECD, 'Prevention of Corruption in the Public Sector in Eastern Europe and Central Asia', 2015, page 42.

¹⁵ Quentin Reed (2017), *Technical Paper: Corruption Proofing in Eastern Partnership Countries: Overview and Lessons for Good Practice*, CoE, Strasbourg, page 6.

¹⁶ Hereinafter see Christina Tsarna (2020), *Corruption Proofing of Legislation, Morocco*, slides 28-29.

corruption proofing were independently updated. Using the software, the NAC screens around 1000 drafts per year.

The special feature of the updated NAC Moldovan methodology is that it allows spotting both the problematic provision (i.e.: containing wide discretions, ambiguous wordings etc.), while specifically explaining how such a provision would lead to actual corruption (i.e.: bribery, abuse of office, illicit enrichment, money laundering etc.). This approach advanced the understanding that drafts generate corruption risks by 1) facilitating the committing of crimes and 2) by making corruption legal.¹⁷

NAC has a special unit for conducting CPL (General Directorate of Legislation and Corruption Proofing) employing 13 experts. Its jurisdiction of proofing covers all draft legal and regulatory acts but findings of NAC are not binding for the drafters.¹⁸ Findings are officially communicated to drafters and disagreements over findings are resolved by ad hoc working groups and all findings are published.¹⁹

In Moldova, the requirement of conducting CPL was stipulated in three laws: the Integrity Law, the Law on Normative Acts and the Law on the National Anti-corruption Center.²⁰ In 2017, the Law on the Legislative Acts and the Law on the Normative Acts of the Government were repealed and replaced by the Law on the Normative Acts 100/2017, which explains how CPL fits into the legislative process and that it is mandatory. The Law on the National Anti-corruption Center stipulates that one of the duties of the latter is to conduct CPL.

A short glimpse at the Moldovan Methodology is provided by the standard CPL report structure²¹:

Table 3. CPL report structure in Moldova

Corruption Proofing Expertise Report for the draft

[Title of the draft subject to anti-corruption expertise]

I. Analysis of the risks of corrupting the draft's promotion process

I.1. Relevance of the author and of the proposed category of the act promoted by draft

I.2. Compliance with the requirements of transparency in the decision-making process in promoting the draft

I.3. Declared and real purpose of the draft

I.4. Public and private interests advanced by the draft

¹⁷ See *ibid*, slide 20.

¹⁸ Quentin Reed (2017), *Technical Paper: Corruption Proofing in Eastern Partnership Countries: Overview and Lessons for Good Practice*, CoE, Strasbourg, page 17.

¹⁹ See *ibid*, page 19.

²⁰ Tilman Hoppe (2017), 'Methodology for Conducting Anti-corruption Expert Review of Draft Legislative and Regulatory Acts', RAI-SEE, Sarajevo, page 70.

²¹ The two tables of Moldovan experience are provided by Anti-corruption Expert from Moldova Cristina Tsarna

- chart of private interests connected to the draft

1.5. Justification of the draft's solutions

1.5.1. Sufficiency of the reasoning in the draft's supporting note

1.5.2. Economic-financial reasoning

1.5.3. Performing the regulatory impact analysis

1.5.4. Feasibility studies

II. General analysis of the draft's risk factors

II.1. Language of the draft

II.2. Legal coherence of the draft

II.3. Activity of public officials and public entities regulated by the draft

II.4. Violations of human rights that may be caused at the implementation of the draft

III. Detailed analysis of the draft's risk factors and corruption risks

No.	Art. __ para. __ (let. __)		
	...		
	Objections:		
	...		
	Recommendations:		
	...		
	Risk factors:	Corruption risks:	
	• ...	• ...	

IV. Expertise report's conclusions

Date

Name of the expert, position

The methodology contains a one-page overview of all the corruption risk factors it uses (a total of 37, presented below).

Table 4. Chart of Corruption Risks Factors within the CPL methodology of Moldova

Risk factors generated by BAD LANGUAGE OF THE DRAFT:	I. LEGAL WORDING	
	1.	Use of new terms which are not defined in the legislation or the draft
	2.	Irregular use of terms
	3.	Ambiguous wording allowing abusive interpretation
	II. LEGAL COHERENCE	
	4.	Faulty reference provisions
	5.	Faulty delegation provisions
Risk factors generated by LACK IN THE DRAFT OF CORRUPTION PREVENTION MECHANISMS IN THE FOLLOWING DOMAINS:	6.	Conflicting provisions
	7.	Gaps (lacunas)
	III. TRANSPARENCY AND ACCESS TO INFORMATION	
	8.	Lack/insufficiency of access to information on by-laws
	9.	Lack/insufficiency of transparency in the functioning of a public entity
	10.	Lack/insufficiency of access to information of public interest
	IV. EXERCISING INDIVIDUAL RIGHTS AND OBLIGATIONS	
	11.	Exaggerated costs for provision's enforcement as compared to the public benefit
	12.	Promotion of interests contrary to the public interest
	13.	Infringement of interests contrary to the public interest
	14.	Excessive requirements for exercising rights/duties
	15.	Unjustified exceptions from the exercise of rights/duties
	16.	Unjustified limitation of human rights
	17.	Discriminatory provisions
	18.	Excessive, improper duties or duties contrary to the status of the private person/entity
	19.	Stimulating unfair competition

20.	Unfeasible provisions	
<u>V. EXERCISING PUBLIC ENTITY'S DUTIES</u>		
21.	Extensive regulatory powers	
22.	Excessive, improper duties or duties contrary to the status of the public entity	
23.	Parallel duties	
24.	Unspecified responsible public entity/subject the provision refers to	
25.	Duties set up in a manner that allows exceptions and abusive interpretations	
26.	Setting up a right of the public entity instead of a duty	
27.	Cumulating competences to set up, control and sanction failing of the rules	
28.	Non-exhaustive, ambiguous or subjective grounds for a public entity to refuse to act	
29.	Lack/ambiguity of administrative proceedings	
30.	Lack of specific terms / unjustified terms / unjustified extension of terms	
<u>VI. OVERSIGHT MECHANISMS</u>		
31.	Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)	
32.	Lack/insufficiency of mechanisms to challenge decisions and actions of public entities	
<u>VII. LIABILITY AND SANCTIONING</u>		
33.	Confusion/duplication of types of legal liability for the same violation	
34.	Non-exhaustive grounds for liability	
35.	Lack of clear liability for violations	
36.	Lack of clear sanctions for violations	
37.	Mismatch between the violation and sanction	

Lithuania

In Lithuania, CPL is called Anti-corruption Assessment of Legislation. The Special Investigative Service (SIS) is the Independent anti-corruption institution of Lithuania.²² One of its tasks, as per article 7 of Republic

²² Lithuanian Special Investigative Service: historical background.

of Lithuania Law on Special Investigative Service, is corruption prevention.²³ Based on this task, and on article 8 of the same law, SIS – either on its own initiative or as a result of a proposal by the President, Speaker of Seimas (Parliament), Prime Minister, a Seimas committee or a parliamentary group - conducts Anti-corruption Assessment of legislation and their drafts (ACAL).²⁴ Conclusions are presented to the state or local authority which drafted, adopted or initiated the draft, which then decides whether or not the relevant piece of legislation should be improved. SIS approved a special procedure for conducting ACAL (Special Procedure).²⁵

According to Special Procedure, point 14 the ACAL shall be conducted during a period of 15 working days and this period can be extended by 10 working days. While conducting ACAL, the evaluator shall:

- Take into account the existing legal regulation and public relations in the field;
- Predict the impact that the legislation or project will have in relation to the prevention of corruption, from a public relations point of view;
- Assessing the current law, take into account the legislation and the practice of the difficulties identified corruption cases and to which specific provisions of the instrument allows for corruption
- Take into account the legal system and other legislation;
- Assess whether the provisions of the act or the draft is internally consistent and consistent with the relevant area of legislation;
- Take into account whether or not the act or the draft legislation determines the entities whose activities are governed by the rights and duties defined by their competence;
- As far as possible, analyse the cause of the law or the draft legislation in detail;
- Receive (if needed for official purposes) information available from other SIS units, which may be necessary to the assessment of the anti-corruption law or draft legislation; and
- Assess whether the law or the project determines the controlling entity defines the forms of control, to determine whether controlling the rights and giving body is the same person.

Special Procedure, as an annex has questions of ACAL, which are 15 and are not grouped into categories rather it is a free-style enumeration.

²³ Law of Lithuania on Special Investigative Service.

²⁴ See *ibid.*

²⁵ Lithuania, Anti-corruption assessment procedure of existing or draft legislation in Special Investigation Service, <https://www.stt.lt/en/corruption-prevention/anti-corruption-assessment-of-legislation/4984>.

Table 5. Questions of ACAL

Question No.	Question	Analysis of the question
1.	Do the objectives align with the provisions of the law?	
2.	Does the regulatory scope of the law sufficiently cover the relevant area?	
3.	Does the set with the anticipated regulatory assumptions is not set to profit for the account?	
4.	Are there any obvious gaps that will allow ambiguous interpretation?	
5.	Are there adequate enforcement mechanisms, and are rights and obligations defined for the implementing entities?	
6.	Are sanctions foreseen for cases of violation?	
7.	Are there legal act implementation activities of entities and procedures of control?	
8.	What considerations influenced the preparation of the law?	
9.	Are the solutions expected and (or) will they be made publicly available?	
10.	Do not alter the transparency because of fixed, predictable legal framework?	
11.	Does a predictable legal framework avoid creating additional conditions for corruption as well as for acting in bad faith, illegality, non-transparency, or bias?	
12.	Does the law provide the power to grant benefits to only one entity?	
13.	Are there any mechanisms of control over the stakeholders?	
14.	Does the law provide a transparent decision-making process?	
15.	Other relevant issues.	

SIS presents some examples of how it used ACAL. Below are some of them:²⁶

Box 1 and 2. ACAL in practice: examples

Law on Official Ethics Commission of the Republic of Lithuania
Situation: The Seimas of the Republic of Lithuania, by supplementing the Law on Official Ethics Commission draft, proposed to create preconditions for the Ethics Commission to work more efficiently and effectively. The draft proposed to determine the terms of membership for the Commission's - set at five years of service.
Remarks: the ratio of required work experience within the duties of the Commission's members was not specified. In order to increase transparency, SIS proposed to determine what type of experience was needed to take the Commissioner's office. The draft also stipulates that the member of Commission shall not have the right to publish opinions or comments, as that would bring in room for deliberation and to make the voting outcomes public. SIS believes that banning the expression of opinion would mean reducing transparency and publicity.

Law on Pharmacy of Republic of Lithuania
Situation: The Seimas of the Republic of Lithuania, by its drafting of the Pharmacy Act, offered to supplement articles, which would allow non-prescription pharmaceutical products to sold in retail outlets to residents without the need for licensing. The Health Minister will approve a list of non-prescription medicines. The project also proposed to allow, without restriction, the activities of several subjects of pharmacy in the same building.
Remarks: 1) If the subjects are allowed to trade in medicinal products in retail outlets, a flawed situation could occur where some pharmacies that engage in the activity require a license, while others do not. 2) From the provisions of the draft is not clear what criteria would be selected for eligibility for the retail trade, whilst and ensuring safety. 3) We have an anti-corruption assessment report, where we offer to consider the implementation of legislation and the development of drafts in order to reduce the margin of discretion.

Ukraine

In Ukraine CPL is called Anti-corruption Expertise of legal acts and is regulated by the Law on Corruption Prevention. There are 3 bodies which conduct CPL in Ukraine:

1. Ministry of Justice;

²⁶ Available *ibid*

2. Committee of Verkhovny Rada (Parliament) the mission of which is the fight against corruption;
3. National Agency on Corruption Prevention.

According to article 55 of this law the objective of CPL (in Ukrainian context Anti-corruption Expertise) is detection of factors and development of recommendations in connection with factors in draft normative-legal acts and in-force normative-legal acts which are conducive to corruption crimes. Mandatory CPL is being conducted by the Ministry of Justice of Ukraine, except for those draft normative-legal acts which are authored by MPs of Ukraine in Verkhovny Rada (Parliament). In the case of draft normative-legal acts authored by MPs the CPL is being conducted by the relevant committee of Verkhovny Rada the subject matter of which is the fight against corruption.

The Ministry of Justice of Ukraine decides on the manner and methodology on conducting CPL and publication of the results. Ministry of Justice conducts CPL in relation to all draft normative-legal acts which are being deliberated by the Cabinet of Ministers of Ukraine.

As about in-force normative-legal acts the Ministry of Justice conducts CPL based on annual plan approved by itself. The range of legal acts covers laws of Ukraine, acts of the President of Ukraine and Cabinet of Ministers in relation with such sectors as: Freedoms and Rights of people and citizen; Powers of state and municipal bodies and persons; Provision of administrative services; Disbursement and expenses of state and municipal budgets; Contest (procurement) procedures.

National Agency on Corruption Prevention conducts CPL based on own initiative and in accordance with the order established by itself in regard to draft normative-legal acts which are deliberated in Verkhovny Rada or Cabinet of Ministers

The Cabinet of Ministers sends to the Agency all relevant draft normative-legal acts. The Agency informs relevant committee of Verkhovny Rada or Cabinet of Ministers on conducting CPL in regard to draft normative-legal act which is a basis for suspension of its adoption or further deliberation for maximum 10 days period. Public Council of the Agency is being involved in the conduct of CPL.

In the case of in-force normative-legal acts, if the CPL reveals factors conducive to corruption then the results of CPL shall be published at the official website of the body which conducted CPL.

It must be noted that in Ukraine natural persons, social unions, legal persons can initiate conduct of CPL in regard to both in-force and draft normative-legal acts. In such cases, expenses for conduct of CPL and publication of its results is being covered by the means of respective natural and legal persons, social unions or other means not prohibited by the legislation.

The results of CPL, including of CPL initiated by the public (natural and legal persons, social unions) are subject to mandatory discussion by the author of the relevant act or its legal successor or a subject to which were transferred the relevant powers of norm creation in the given sector.

The Agency conducts periodic review of legislation with the aim to detect corruptogenic norms and presents to the Ministry of Justice recommendations concerning inclusion of them in the plan of

conducting CPL. The Agency for conducting this periodic review may involve social unions, academic institutions, including on the basis of open contest (state procurement).

The Agency adopted 2 legal acts for CPL purposes: The Methodology of CPL; Order of Conduct of CPL.²⁷ Here will be considered the Methodology of the Agency as because it is considered better than one adopted by the Ministry of Justice.

The Methodology contains both Procedure and Corruptogenic factors. According to chapter II, point 1 of the Methodology CPL is composed from 2 stages: Conduct of monitoring of draft acts on the subject of existence of indicators showing necessity to conduct CPL; Conduct of actual CPL. The Methodology also stipulates priorities of draft acts. According to prioritization, the first group of priority are those draft acts which are put into deliberation of Verkhovny Rada by President of Ukraine, Cabinet of Ministers, MP who is member of a coalition faction or a faction which has the most number of MPs, the subject matter falls within ambits of Law on Administrative Services, Law on Main Principles of State Control in the field of Economic Activities, Law on Licensing of Economic Activities, Law on the System of Permissions in Economic Activities.

The monitoring of draft acts (in-force acts) is being conducted through evaluation of existence of such indicators as: Existence of information received by the Agency or information published in mass media or Internet, on threats of corrupt or other violations pertinent to corruption in regard to initiation and deliberation of act by the Cabinet of Ministers of Verkhovny Rada; The draft act or similar (analogous) act was previously considered such as one containing corruptogenic factors and the recommendations of previous CPL had been disregarded; Existence of information on disregard of public consultations procedure during drafting the act or fictitious character of public consultations; Existence of corruptogenic factors in the draft act; The subject matter of regulation of the draft act relates to such sectors which are considered as ones with high level of corruption risks (order of provision of administrative services, licensing, sell of state or municipal property or transfer of corporate rights of state (territorial communities), regulation of operation of state or community entities or enterprises with state or community investments, formation or use of means from state or municipal budgets, stipulations (alteration) of order of conduct of contests/tenders/auctions, conduct of state control, stipulation of access to publicly important information, regulation of procedures of economic competitions, bankruptcy, alteration of tax or customs legislation.

As a result of monitoring of draft act (in-force act) detection of indicators mentioned above the Agency either conducts CPL or recommends the Ministry of Justice to include the in-force act in the plan of acts subject to CPL. If during the monitoring are detected such incidents as breach of ethical conduct, conflict of interest of state or municipal officials, breach of requirements for the protection of whistleblowers or other laws the Agency gives instruction to the head of relevant state organ to eliminate detected breach.

The Agency sends letter to profile committee of Verkhovny Rada and committee within the ambits of which is the fight against corruption or to Cabinet of Minister for suspending deliberation or adoption of

²⁷ <https://zakon.rada.gov.ua/laws/show/z0787-20?fbclid=IwAR3S6F-Q8zxTIAvfgvzfjZdqOhk9XsuSANGVcz-leEQZVEAaRIsDK0WR0PQ#Text>

an act for not more than 10 days period. Not later than the next day after commencement of CPL, the Agency shall involve in CPL the Public Council attached to it. Besides, in case of necessity or if the authors act disregarded positions/opinions of stakeholders then the Agency shall involve the relevant stakeholders.

Conclusion of CPL is being sent to profile committee of Verkhovny Rada and committee within the ambit of which is the fight against corruption or to Cabinet of Minister. Besides, it is being published at the official website of the Agency.

The Methodology has also 2 check-lists as attachments: One is about indicators showing necessity to conduct CPL; The second one is about corruptogenic factors.

Table 6. Checklist on Indicators showing necessity to conduct CPL on draft and in-force normative-legal acts in Ukraine

№	Indicators showing necessity to conduct CPL	Approval
1	Existence of information in the Agency or in mass media or internet was published such information as on indicating threats or existing corruption facts or delicts connected with corruption, other delicts stipulated by the Law on Corruption Prevention, in particular on conflict of interest of state or municipal officials in connection initiation of draft normative-legal act for circulation in Verkhovny Rada or Cabinet of Ministers of Ukraine.	Yes/No
2	Draft normative-legal act or analogous to it in terms of content/sector of regulation was previously recognized such as one which contains corruptogenic factors and recommendations of previous CPL had been disregarded.	Yes/No
3	Existence of information on violation of public consultations in regard to the draft normative-legal act or fictitious character of consultations (limiting access to consultations for business associations, disregarding articulated observations without proper justifications).	Yes/No
4	Existence of corruptogenic factors in draft normative-legal act (in-force normative-legal act)	Yes/No
5	Subject-matter of draft normative-legal act (in-force normative-legal act) is connected with a sector where there are high corruption risks	Yes/No Sectors:

Decision:

1. To conduct CPL;
2. To recommend the Ministry of Justice to include in-force normative-legal act in the plan for conducting CPL;
3. To issue instruction to the author of normative-legal act if during the monitoring was revealed violations of requirements stipulated in the Law on Corruption Prevention, in particular ones connected with ethical conduct, conflict of interest, protection of whistleblowers or other violations of the same law.

Positions, name and surname of Expert who conducts monitoring

Table 7. Checklist on Corruptogenic Factors in Ukraine

No	Corruptogenic factors (factors are being considered as corruptogenic if they can be conducive to commitment of corruption delicts or delicts connected with corruption)	Approval
1	Not proper definition of competencies and powers of state or municipal organs, authorized persons.	
1.1	First time stipulation or enlargement of discretionary powers of state or municipal bodies or authorized persons together with lack of exhaustive list of events, foundations, forms, dates and manner for implementation of that powers, control over implementation and liability for possible abuse of powers during enforcement of that powers.	Yes/No
1.2	Excess of powers stipulated by legislation of state or municipal bodies	Yes/No
1.3	Provision of powers which are granted to other state or municipal bodies or authorized persons (duplication of powers) which creates uncertainty as on responsible actor	Yes/No
1.4	Unjustified delegation of powers of state or municipal bodies to actors of private law	Yes/No
1.5	Unjustified stipulation of provisions of mandatory nature by inferior normative-legal acts regarding regulation of relationships in sectors with high risk of corruption	Yes/No
1.6	Lack of list of types, decision forms subject to adoption by an actor, also lack of timeline and order for adoption of decisions in any sector except for provision of administrative services	Yes/No
1.7	Creation of conditions for mandatory personal contact between natural and legal persons or their representatives with an actor of power	Yes/No
2	Improper definition of circle of rights and duties of natural and legal persons	Yes/No

2.1	Ambiguous, together with violation of the principle of legal certainty, regulation of rights, duties and responsibility of legal and natural persons in any sector	Yes/No
2.2	Creation of obstacles for recipients of administrative, education, social or other services, lack or limitation of right to appeal	Yes/No
2.3	Unjustified stipulation of benefits, advantages or other privileges for legal and natural persons	Yes/No
3	Legal collision in legislation	Yes/No
3.1	Contradictions between different provisions of the same normative-legal act or between different normative-legal acts with the same legal force in connection with the resolution of the same question, which crates different commentaries of legal norm.	Yes/No
3.2	Discrepancies between provisions of normative-legal act with provisions of normative-legal act which has higher legal force or with international obligations of Ukraine	Yes/No
4	Use of legal constructions of evaluative nature	Yes/No
5	Amplification of realization of measures stipulated by legislation for prevention or fight against corruption	Yes/No
5.1	Ungrounded exclusion of certain category of persons from anti-corruption requirements, bans or limitations or control toward them, monitoring other measures for prevention or fight against corruption	Yes/No
5.2	Introduction of legal regulation which makes possible to avoid criminal, administrative, disciplinary or civil responsibility	Yes/No
5.3	Narrowing content or volume of existing powers of specially empowered actors in the field of fight against corruption	Yes/No

North Macedonia

In North Macedonia State Commission for the Prevention of Corruption (SCPC) is in charge for CPL. In Macedonian context CPL is called Anti-corruption Review of laws, by-laws and other general acts. The mandate ensues from article 17 of 2019 Law on Prevention of Corruption and Conflict of Interest.²⁸ According to it, the Commission can conduct anti-corruption review of laws, by-laws and other general acts, in accordance with the methodology adopted by the SCPC.

The SCPC adopted its own methodology and according to it Anti-corruption Review of Legislation is an analysis and assessment of the form and content of the regulations (laws, by-laws and other general acts) that are in preparation or that have already been prepared in terms of their practical implementation,

²⁸ <https://dsk.mk/wp-content/uploads/2021/04/Metodologija-za-APL-ENG.pdf>

compliance and their improvement in order to detect, prevent and minimize risks related to the possibility of corruption and conflicts of interest that may result during law application.²⁹

The scope of CPL in North Macedonia includes laws, by-laws and other general acts that are in the process of being drafted or that are already in force, adopted in an ordinary legislative procedure or in a shortened procedure. Laws adoption of which is proposed by urgent procedure, laws for ratification of international agreements, laws harmonizing terminology with other laws, the draft budget of North Macedonia and the Law on Execution of the Budget of North Macedonia are out of scope of CPL.

According to the Methodology, the SCPC Work Program for the current year determines and plans all activities related to the implementation of the anti-corruption review of legislation, after which the SCPC adopts its Annual Plan for Implementing the Anti-corruption Review of Legislation and a Special Plan and Schedule for Implementing the Anti-corruption Review of Legislation on the submitted draft laws and the legislative proposals and laws that have already been adopted.

Regarding the anti-corruption review of by-laws, the SCPC, based on pre-determined criteria of priority, determines which by-laws will be inspected within a year and lists them in the Annual Plan and the Special Plan and Schedule for Implementing the Anti-corruption Review of Legislation. The SCPC also has the discretion to review by-laws that are not listed in the Annual Plan.

In regard to in-force laws, the SCPC has the sole discretion regarding the selection of priority laws for their urgent review.

The SCPC selects and prioritizes legislation based on common criteria or in individual cases. The general criteria relate to legal areas and sectors usually susceptible to corruption; laws containing mechanisms susceptible to corruption (such as securing financial incentives, issuing licenses and permits, collecting fees, taxes), whether or not the legal area in question is usually at risk of corruption; areas with high levels of perceived or real corruption according to national and international research; areas identified as high risk in national anti-corruption action plans and strategic documents and prioritized for reform. As about individual cases, they are related to information or reports from the media or civil society, and an indication from other competent bodies regarding the risks of possible corruption and conflict of interest in certain legal provisions or a particular legal area; information on a draft law that is exposed to strong lobbying by interest groups, etc.

For the purposes of conducting CPL and prioritizing in-force laws, the SCPC creates Anti-corruption Review Plans, in which are selected and included legislation to be reviewed over a certain period of time.

According to Rules of Procedure of the Government of North Macedonia, the relevant ministries publish proposals for adoption of laws, draft laws and legislative proposals on their websites and in the single electronic register of regulations except for draft laws adoption of which is proposed to be done through urgent procedure. Each interested party submits opinions, comments and proposals in the single electronic register of regulations regarding the published draft laws and legislative proposals within 10

²⁹ See *ibid*, page 4

days from the publication, after which the competent ministry prepares and publishes a report on received opinions. The competent ministries should submit the published proposals for adoption of laws, draft laws and legislative proposals before the announcement, to the SCPC for opinion or review of their form and content in order to detect, prevent and minimize the risks for adoption of legal provisions that are prone to corruption and conflict of interest.

As a result of CPL, the SCPC publish Review Report. The Review Report consists of three parts: key data, analysis and opinion with recommendations. Key data includes a given law and its objectives. The analysis concerns the regulatory risks of corruption, which is mainly structured around two main categories: ambiguity and legal shortcomings or loopholes in terms of prevention. The opinion together with the recommendations offer alternative formulations of the law to show whether and how the risk of corruption or conflict of interest can be mitigated. The opinions and recommendations provided should be accepted or, if this is not the case, their rejection should be explained in detail. The Review Report shall be sent together with the draft law/legislative proposal to the competent ministry, which is obliged to incorporate the opinion together with the anti-corruption review recommendations, or to provide an explanation for the recommendations that have not been accepted. The SCPC publishes anti-corruption review reports on its website, unless the report contains information that is considered classified.

The Corruption Risks contained in the methodology is very similar, if not identical, to ones proposed by Dr. Hoppe.

Table 8. Corruption Risk Assessment Checklist of CPL Methodology of North Macedonia³⁰

³⁰ See pages 12-15 of Methodology, available at <https://dsk.mk/wp-content/uploads/2021/04/Metodologija-za-APL-ENG.pdf>

Corruption Risk Assessment Checklist

This checklist should be completed when checking each regulation.

What is in parentheses is stated in the opinion prepared by the SCPC.

1. Ambiguity	YES/NO
1.1. Language	
1.1.1 Are exact and correct formulations used in the draft law, the law, by-laws or other general acts? (choice of words)	
1.1.2 Are sentences and words related in a way that does not allow for ambiguity or vagueness? (sentence construction)	
1.2. Legal compliance	
1.2.1 Are there provisions in other laws that may be in conflict with the draft law, the law, by-laws or other general acts? (conflicting provisions)	
1.2.2. Do the draft law, the law, by-laws or other general acts give a certain terms different meaning or a meaning which is contrary to another law (inconsistent terminology)	
1.2.3. Is a reference to another law or example in the regulation itself unclear to the reader? (unclear references)	
1.2.4. Did the authors cover all the necessary aspects that need to be regulated? (regulatory loopholes)	
1.2.5. Is a single structure of the law provided?	
2. Prevention of loopholes	
2.1. Competence	
2.1.1 Do the draft law, the law, by-laws or other general acts define a body	

responsible for all the described/listed competencies and tasks? (unidentified competencies)	
2.1.2. Do the draft law, the law, by-laws or other general acts "forget" to give the competent organ/body the competencies necessary to perform the tasks? (unidentified item)	
2.1.3. If the draft law, the law, by-laws or other general acts provide for the establishment of a new body or new competencies – is it clear which body will perform the tasks until a new body is formed or until the new body has taken over the execution of the tasks in practice? (Delayed establishment or founding of a body)	
2.1.4. If the draft law, the law, by-laws or other general acts provide for the establishment of a new body of competencies previously performed by another body, is it clear who will perform the competencies until the new body is established or until the new body starts working? (delegation of competence to another body)	
2.1.5. Do the draft law, the law, by-laws or other general acts envisage competencies for a state body, which are already implemented by another body? (overlapping or conflict of competencies)	
2.1.6. If the draft law, the law, by-laws or other general acts provide for the act to be implemented by several bodies, do they list all the competencies that each of the bodies should perform? (division of competencies)	
2.1.7. Does the draft law, the law, by-laws or other general acts contain provisions for conflict of interest?	
2.2. Competence and resources: The public authorities are to provide all the competencies and resources necessary to perform the tasks	
2.3. Procedures	
2.3.1. Are all stages in the procedure identified? (unidentified stages, steps in the procedure)	
2.3.2. Are the deadlines in the procedure clearly defined, for example when natural or legal persons can request the realization of a certain right and within which deadline the request should be decided upon)? (unidentified	

deadlines)	
2.3.3. Are fees identified in the procedure? (unidentified fees)	
2.3.4. Are the criteria contained in the procedures clear, objective and transparent? (non-objective and non-transparent procedure)	
2.3.5. Are there clear criteria for fulfilling a certain right or imposing a certain obligation? (unfair and non-transparent procedure)	
2.3.6. Are clear criteria set for the allocation of limited state resources (tasks, subsidies) and are the procedures transparent?	
2.3.7. Is there a legal remedy for challenging each of the decisions listed in the regulations (complaint, appeal or lawsuit for initiating court proceedings)? (legal protection provided)	
2.4. Decisions	
2.4.1. Do the draft law, the law, by-laws or other general acts contain certain discretionary rights that go beyond the expediency for which they are granted? (excessive discretionary rights)	
2.4.2. Are all decisions intended to contain explanations?	
2.4.3. Is there a legal remedy for challenging a decision and which is the competent body that should decide on the legal remedy (complaint, appeal or lawsuit)?	
2.4.4. Are there provisions that leave the possibility for discretionary decision and are they expedient and based on law?	
2.5. Control	
2.5.1. Are procedures and results prescribed that ensure transparency, and enable civil or media control? (control of transparency by civil society)	
2.5.2. Has the excessive concentration of competencies in one state body, one sector or unit and one official been avoided? (separation of tasks)	
2.5.3. Is there a rotation of officials in high risk areas (for example, public procurement)? (rotation)	
2.5.4. Are there any control mechanisms in place?	
2.6. Sanctions	
2.6.1. Are expedient, proportionate and appropriate sanctions envisaged?	
2.7. Legal protection	

2.7.1. Is a regular remedy (appeal/complaint) and a clear two-stage procedure envisaged?	
2.7.2. Is there a right to judicial protection envisaged?	
3. Other risks:	
3.1. Are there any dubious privileges contained in the law for certain interest groups?	
3.2. Is there transparency in the procedure for adopting the draft law, the law, by-laws or other general acts?	

Serbia

Since 2020 Serbia has new body for Anti-corruption. Since the beginning of September 2020, Law on Prevention of Corruption has entered into force in Serbia, by which the main anti-corruption body, Anti-corruption Agency of Serbia changed its name to Agency for Prevention of Corruption.³¹ According to article 6 of the new Law one of the competencies of the Agency now is:

"[I]nitiate adoption or amendment of regulations, provides opinions on the assessment of the risk of corruption in draft laws in the fields that are particularly susceptible to the risk of corruption and opinions on draft laws governing issues covered by ratified international agreements in the field of preventing and combating corruption."

Article 35 goes further and particularizes what this competency stands for. "The Agency shall initiate the adoption of regulations to eliminate the risk of corruption or align regulations with ratified international agreements in the field of fight against corruption. State administration authorities are obliged to submit to the Agency draft laws from fields that are particularly susceptible to risks of corruption and draft laws regulating issues covered by ratified international agreements in the field of fight against corruption, to enable the Agency to provide opinions on the assessment of the risk of corruption."

According to Annual Report 2020 of the Agency, during 2020 the Agency issued two opinions on the assessment of corruption risks in the proposals and drafts of regulations: Ministry of Justice and the Ministry of Finance submitted one request for Agency's opinion each.³² In addition, during 2020 together with OSCE, the Agency prepared a new Methodology on Corruption Risk Assessment in regulations. At the website of the Agency is available an analysis from the Senior Advisor of the Agency Mr. Jovan Nicić.³³ This analysis was before 2020 the year when new law was adopted and new methodology was developed.³⁴

³¹ <https://europeanwesternbalkans.com/2020/09/28/law-on-prevention-of-corruption-the-new-hope-for-fighting-corruption-in-serbia/>

³² https://www.acas.rs/wp-content/uploads/2021/04/Annual_Report_2020_APC_F_Ivan.pdf?pismo=lat, page 50

³³ <https://www.acas.rs/wp-content/uploads/2012/12/Rizik-korupcije-u-propisima.pdf>

³⁴ See *ibid*, page 8

The new Methodology now is available at the official website of the Agency³⁵. In terms of areas which are particularly vulnerable to corruption, the Methodology in point 3.1 mentions 8 areas: healthcare; taxes; customs; education; local government; privatization; public procurement; police. Why exactly these 8 areas were chosen is unclear. Ideally selection of these areas had to be done by having proper evidence-base such as surveys and studies. Nevertheless, these are the 8 areas which Methodology considers as most vulnerable. It must be mentioned that the Methodology adopted approach which is quite professional. According to the same point 3.1 the Agency inspects areas at least once a year in order to include possible changes in strategic documents and the Agency publishes information on areas particularly vulnerable to corruption.

At the request of state administration bodies, the Agency provides opinion in regard to draft laws covering the 8 areas mentioned above and draft laws governing issues covered by ratified international instruments in the field of corruption prevention and the fight against corruption.

In regard to in-force legal acts point 3.2. of the Methodology mentions: "The Agency ex officio assesses the risk of corruption in the applicable regulations (laws and bylaws) of the National Assembly of the Republic of Serbia, the Government of the Republic of Serbia and any other public authority when it becomes known that these regulations contain provisions that create risks of corruption. The opinion on the assessment of the risk of corruption in the current regulation is accompanied by the initiative to adopt or amend the current regulation, in order to reduce the risks of corruption and eliminate the factors that are their cause". A problematic factor here is the last part of the 1st sentence: "when it becomes known that these regulations contain provisions that create risks of corruption". There are no mechanisms in place. How it becomes known, who decides that there is enough information to consider that provision contains corruption risks?

According to Methodology the deadline for CPL is 10 working days from the day of receipt of the request which can be extended up to 1 month period (for cases where the draft laws are particularly complex or extensive). The deadline for CPL in regard to in-force legal acts is not set in the Methodology. However, it is mentioned that the Agency plans to compile a list of valid regulations once a year, on which it prepares opinions on the assessment of the risk of corruption during that quarter or year.

In order to ensure that draft laws in the area of particularly high-risk corruption are submitted to the Agency for CPL, the Methodology (point 6) states that the Agency will initiate the signing of a memorandum of cooperation with the Republic Secretariat for Legislation and the Ministry of Justice, and if necessary with other public authorities. This is a very risk approach as because if these bodies will fail to act in accordance with the letter and spirit of memorandum then the Agency will be able to conduct CPL on draft legal acts.

The Methodology also stipulates procedures for assignment of CPL cases. The general rule is that assignments of concrete CPL cases are made by the head of competent unit in the Agency and the head

³⁵ <https://www.acas.rs/wp-content/uploads/2021/04/ASKMetodologijaweb.pdf>

shall take into account specialization of personnel and in cases of complex cases it can be formed a group with an assigned chief of the group.

As a result of CPL the relevant official shall prepare opinion which after approval and signature by the relevant official at the Agency can be published on its website and shall provide to the state body which requested CPL. Opinions on CPL for in-force legal acts the Agency uses it as justification for submitting an initiative to amend the legislation.

The actual CPL is divided into 8 consecutive stages:

1. Review of the normative framework in regard to legal act;
2. Consideration of explanations of in regard to legal act;
3. Review of regulations being assessed;
4. Determining risk factors for corruption;
5. Determining the risk of corruption;
6. Establishing information related to lobbying private interests;
7. Consideration of other relevant information;
8. Assessment of damage that could be caused by the regulation.

For each of these stages the Methodology provides short guidance. The actual opinion on CPL consists of 3 parts:

- Corruption risk assessment related to the legislative process;
- Detailed analysis of corruption risks and risk factors in the provisions;
- Conclusions.

In terms of checklist of factors, it is almost identical with Moldovan one.

Russia

In Russia CPL is regulated by Federal Law on Anti-corruption Expertise of Normative-Legal Acts and Draft Normative-Legal Acts adopted in 2009.³⁶ It is unique in the sense that there is a law in Russia for regulation of CPL. According to article 1 of this law, corruptogenic factors are provisions in draft and in-force normative-legal acts which stipulate ungrounded wide discretions for the implementers or opportunity to exercise exception from general rules without having proper basis and provisions which contain unclear, excessive or difficult to implement requirements.

Bodies which conduct CPL in Russia are:

³⁶ <https://minjust.gov.ru/ru/documents/7599/>

1. Prosecutor's Office of Russian Federation;
2. Executive federal organs in the field of Justice;
3. Other state organs, organizations and officials.

All of these bodies, in accordance with article 3 of the law, shall conduct CPL based on the Methodology approved by the Government of Russian Federation. Prosecutors conduct CPL of normative-legal acts of organs, organizations and officials concerning following issues:

1. Human rights, freedoms and obligations;
2. State and municipal property, state and municipal service, tax, customs, forest, water, land, urban, environmental legislation, legislation on licensing, legislation regulating operation of state corporations, funds and other organizations established by Russian Federation based on a federal law;
3. Social guarantees to persons who occupy (occupied) state or municipal offices, offices in state or municipal service.

Executive federal organs in the field of Justice conduct CPL concerning following cases:

1. Draft federal laws, decrees of President of Russian Federation and regulations of the Government of Russian Federation, the same acts developed by federal organs of executive power and other state organs and organizations while conducting legal expertise;
2. Draft alterations by the Government of Russian Federation in regard to draft federal laws, prepared by federal organs of executive power, state organs and organizations while conducting legal expertise;
3. Normative-legal acts of federal organs of executive power, other state organs and organizations concerning Human Rights, Freedoms and Obligations, establishing legal status of organizations or having interagency character, and charters of municipal entities and municipal legal acts on making alterations in charters of municipal entities while their state registration;
4. Normative-legal acts of subjects of Russian Federation while monitoring their enforcement and while including data on federal registry of normative-legal acts of subjects of Russian Federation.

In cases of revealing corruptogenic factors in normative-legal acts (draft normative-legal acts) the Prosecutor's office can demand to make alterations in the act or can apply to the court. The demand of the Prosecutor's office shall be considered in 10 days period. If the demand concerns legislative (representative) organ of state power of Russian Federation or representative body of municipal self-governance then the demand shall be considered in the next session of the body at stake. The demand of Prosecutor's office can be appealed. The conclusions of CPL in the case of normative-legal acts of federal organs of executive power, other state organs and organizations concerning Human Rights, Freedoms and Obligations, establishing legal status of organizations or having interagency character, and charters of municipal entities and municipal legal acts on making alterations in charters of municipal entities are not subject to state registration. In the remaining cases, the conclusions of CPL have nature of recommendation.

According to article 5 of the Law, citizens of Russian Federation and institutes of civil society can conduct independent CPL of draft and in-force normative-legal acts by covering own expenses. To do this, they need to hire independent anti-corruption experts the registry of which is run by the state. The conclusions of such CPL does not have mandatory nature but it is mandatory to be considered in 30 days period by organ, organization or official to whom it is directed. The latter shall answer in writing unless the conclusions of CPL does not contain recommendations on means of elimination of corruptogenic factors.

The Methodology adopted by the Ministry of Justice is mandatory for all the subjects who conducts CPL. It was adopted in 2010 and it is quite short³⁷ Basically corruptogenic factors are divided into 2 big groups:

- a. Factors which establish ungrounded wide discretion for implementer or opportunity for exercising exception from the general rules;
- b. Factors which contain vague, unclear, difficult to implement and (or) excessive requirements to citizens and organizations.

Within the first group fall the following factors:

1. Wide discretionary powers;
2. Defining the competence in the form "Has right";
3. Selective changes of framework of rights;
4. Excessive freedom in norm creation at sub-legislative field;
5. Adoption of normative-legal act out of own competency;
6. Filling-in vacuum created by law through sub-legislative acts while lacking delegation of relevant powers by law;
7. Lack or imperfection of administrative procedures;
8. Waiver of contest (auction) procedures;
9. Normative collisions;

Within the second group fall the following factors:

1. Existence of excessive requirements to a person for realization his/her own right;
2. Abuse of right to appeal by state organs, municipal organs or organizations (their officials);
3. Legal-linguistic uncertainties.

Albania

The case of Albania is unique: CPL is part of Legal Drafting in Albania. In 2010-2011 CoE/EU project against Corruption in Albania assisted with elaboration of CPL addendum to official Law Drafting Manual.³⁸ Thus,

³⁷ <https://miniust.gov.ru/ru/documents/7605/>

³⁸ See in Quentin Reed (2017), *Technical Paper: Corruption Proofing in Eastern Partnership Countries: Overview and Lessons for Good Practice*, CoE, Strasbourg, page 23 quoting C. Coljocar and Q. Reed, "Proposed final version of addendum to Albanian Law Drafting Manual: Corruption Proofing - Using Good Law Drafting to Avoid Creating Corruption Risks in Draft Legislation", CoE/EU Project against Corruption in Albania, April 2011. Available at: <https://rm.coe.int/16805ec88a>. "Law Drafting Manual: A Guide to the Legislative Drafting Process in Albania" (2010) is available at: <http://www.euralius.eu/en/archive-2?download=74:law-drafting-manual>.

in Albania there is Law Drafting Manual to which physical was added an Addendum on Corruption Proofing (CPL).

The CPL got more and more importance and attention in Albania. As it is mentioned in Inter-Sectorial Strategy Against Corruption 2015-2020 of Albania "Just as the risk analyses, the evaluation of corruption proofing of legislation is a novelty for the Albanian public administration. Knowing the potential of such method in the fight against corruption, the government has decided to make its systematic use a key objective of the 2015 – 2017 anti-Corruption Strategy: 1. Including the Corruption Proofing Manual drafted by PACA in the revised manual on the draft legislation; 2. Increasing the capacities of the respective structures to evaluate areas of corruption."³⁹

The Methodology makes cross-references with the Manual. The Methodology is quite short and embraces methodology of Dr. Hoppe. It is composed from 2 parts: Introduction and Corruption Risks. The part on Corruption Risks is divided into 7 categories within which fall 33 risks. Nothing else exists in the Methodology.

The 7 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.

Table 9. Corruption Risks according to Albanian CPL Methodology⁴⁰

Language	1. Unclear/ambiguous expression that allows abusive interpretation 2. Use of different terms for the same phenomenon or use of the same term for distinct phenomena 3. New terms which are not defined in the legislation or the draft
Coherence of the draft and its interaction with other legislation	4. Faulty reference provisions 5. Faulty delegation provisions 6. Concurrent provisions 7. Gaps

³⁹ Inter-Sectoral Strategy Against Corruption 2015-2020 of Albania, page 16

⁴⁰ Proposed final version of addendum to Albanian Law Drafting Manual: Corruption Proofing - Using Good Law Drafting to Avoid Creating Corruption Risks in Draft Legislation", CoE/EU Project against Corruption in Albania, April 2011. Pages 3-14

The manner in which duties of public authorities are established and defined	8. Extensive regulatory powers 9. Excessive duties or duties contrary to the status of the public authority 10. Duties set up in a manner that allows waivers and abusive interpretations 11. Parallel duties 12. Regulating an obligation of the public authority by using discretionary formulations such as "may", "has the right", "can", "is entitled" etc. 13. Exercising duties of setting up rules, controlling their implementation and applying sanctions 14. Non-exhaustive, ambiguous or subjective grounds for a public authority to refuse to act 15. Absent/unclear administrative proceedings 16. Lack of specific terms/deadlines 17. Unjustified timeframes 18. Failure to identify the responsible public authority/subject to which a provision refers
Justification, the public interest and the manner in which rights and obligations are exercised	19. Justification of the draft 20. Promotion of interests contrary to the public interest 21. Infringement of interests contrary to the public interest 22. Exaggerated costs of implementation/enforcement as compared to the public benefit 23. Excessive requirements for the exercise of rights/performance of obligations 24. Provisions establishing unjustified exceptions and waivers 25. Unfeasible provisions
Transparency and Access to Information	26. Lack/insufficiency of access to information of public interest
Accountability and Responsibility	27. Lack of clear accountability of public authorities for the violation of draft provisions 28. Lack of clear sanctions for the violation of draft provisions 29. Disproportionate sanctions for violation of draft provisions 30. Confusion/duplication of legal liabilities for the same violation 31. Non-exhaustive grounds for liability
Control Mechanisms	32. Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public) 33. Lack/insufficiency of mechanisms to challenge/appeal decisions and actions of public authorities

Latvia

In Latvia CPL is being conducted by Corruption Prevention and Combatting Bureau (KNAB). According to section 7, part 1, point 10 of the Law on Corruption Prevention and Combatting Bureau "In order to prevent corruption, the Bureau shall perform the following functions: 10) analyse laws and regulations

and draft laws and regulations, and also initiate to make amendments thereto, submit proposals for drafting new laws and regulations".⁴¹ According to 2020 Annual Report of KNAB in 2020 "[K]NAB analysed potential corruption risks in 1119 draft regulations announced at State Secretary Meetings. As a result, 48 opinions were submitted, providing 47 objections and 23 proposals".⁴²

At the official website of KNAB the methodology of CPL being used by KNAB is missing. Neither the English version of the website⁴³, nor Latvian⁴⁴ and Russian⁴⁵ contain information on CPL (at the moment of 15 September, 2021). Moreover, the Regulation on Operation of the KNAB⁴⁶ does not contain the methodology too.

The author of this paper made an official query to KNAB early on 8 September, 2021. According to official answer from KNAB "Taking into account that the Rules of Procedure of the Cabinet of Ministers (*Ministru kabineta kārtības rullis*, available only in Latvian at: <https://likumi.lv/ta/id/325944-ministru-kabineta-kartibas-rullis>) states that institutions submit opinions on draft regulations only within the scope of competence thereof, no unified methodology for corruption proofing has been officially approved in Latvia, therefore we are unable to provide any relevant documents."⁴⁷ Basically, from this it can be assumed that KNAB conducts CPL in a free-format.

Slovenia

According to article 12 of Integrity and Prevention of Corruption Act⁴⁸ of Slovenia the Commission for the Prevention of Corruption may provide opinions on the compliance of proposals for acts and other regulations with the legislation on the prevention of corruption and conflict of interest, prior to their consideration by the Government. As Commission mentions in its Annual Report of 2019 "[T]he advantage of such an advance anti-corruption review has not yet attained sufficient recognition, as there is no legal basis that would expressly require the Government, or the ministries as proposers of regulations, to review each regulation proposal with regard to corruption risks before submitting it to the National Assembly (in practice, it would be most efficient to do this during inter-ministerial coordination)."⁴⁹ The Commission mentions that it rarely receives proposed acts for review and in 2019 it just reviewed and provided comments for the draft act on Council for Persons with Disabilities. Besides, in 2019 it was a member of working group for drafting the proposal for an act governing the Foundation for Funding Disability and Humanitarian Organisations and the Foundation for Funding Sports Organisations.

⁴¹ <https://likumi.lv/ta/en/en/id/61679-law-on-corruption-prevention-and-combating-bureau>

⁴² <https://www.knab.gov.lv/en/media/1856/download>, page 14

⁴³ <https://www.knab.gov.lv/en/assessment-regulatory-enactments>

⁴⁴ <https://www.knab.gov.lv/lv>

⁴⁵ <https://www.knab.gov.lv/ru/ocenka-normativnykh-aktov>

⁴⁶ <https://www.knab.gov.lv/lv/media/1792/download>

⁴⁷ Official e-mail communication with KNAB received on September 17, 2021

⁴⁸ <https://www.kpk-rs.si/en/legislation/>

⁴⁹ Hereinafter see at <https://www.kpk-rs.si/en/wp-content/uploads/sites/2/2021/01/Annual-Report-2019.pdf> page 49

In its report Assessment of Situation 2019, in regard to systemic deficiencies in the legislative procedure the Commission notes that "Although considerable progress has been made in the past years in relation to improving the quality and transparency of the preparation and implementation of legislative procedures and including the public in the drafting of regulations at the regulatory level, the Commission has noted that, in certain areas, the implementation in practice of such norms often remains unsatisfactory."⁵⁰ In 2017 the Commission started a project to eliminate systemic deficiencies in the preparation and implementation of legislative procedures and for that purpose the Commission started cooperation with the Ministry of Public Administration and Secretariat-General of the Government. After analyzing the situation in regard to systemic deficiencies in the legislative procedure composed certain recommendations covering 2 set of issues: Ensuring the quality of draft and proposed regulations; Ensuring participation in the adoption of regulations.⁵¹

Bulgaria

In Bulgaria the Prevention of Corruption Directorate operating within the Commission for Combating Corruption and Confiscation of Illegally Acquired Property is in charge for CPL. One of its functions is coordination of draft laws prepared by the executive authorities on the existence of corruption risk - making recommendations and proposals with maximum specificity and practical orientation⁵². Besides the Prevention of Corruption Directorate operating within the Commission conducts an annual ex-post analysis of the impact of the adopted legislative acts, which have undergone a conciliation procedure, entered into force and acted no less from 12 months before 31 December of the year for which the analysis is performed. This power is provided in article 32 of the Law against Corruption and Forfeiture of Illegally Acquired Property.⁵³

According to Annual Report for 2020 of the Commission "In 2020, a total of 79 bills were agreed. With regard to 22 of them, indications for corruption risk have been established and 48 proposals have been made for editing texts in order to reduce and avoid this risk. The agreed bills without proposals regarding the presence of corruption risk are 57. In view of the implementation of the provisions of Art. 32, para. 2 of LCONPI, the Commission has been informed by the submitters of the bills that 31 of the proposals have been adopted. As of 31.12.2020 no data have been provided for 6 proposals under 2 bills and the same are in the process of follow-up".⁵⁴

The screening of CPL decisions available at the official website of the Commission indicates that CPL is being conducted in a rather free form as it is in Latvia.

⁵⁰ <https://www.kpk-rs.si/en/wp-content/uploads/sites/2/2021/01/Assessment-of-the-Situation-2019.pdf> page 26

⁵¹ See *Ibid.*, pages 24-25

⁵² <https://www.caciar.bg/bg/prevenclia-na-korupcijata>

⁵³ <https://www.caciar.bg/normativna-uredba/zpkonpi>

⁵⁴ <https://www.caciar.bg/bg/za-nas/prozrachnost/godishni-dokladi> page 11

Conclusions

As it was mentioned in Introduction, CPL is an evolving discipline. Still, there is no internationally agreed definition of it and it is not widely used all around the globe. As it was shown there are various systems of CPL. In Albania it is part of legislative drafting, in South Korea, Moldova, Lithuania, North Macedonia and Serbia it is a part of mission of their anti-corruption agencies, in Ukraine various actors conduct CPL while in Russia it is Prosecutor's office.

There is no one size fits all approach while deciding on the system of CPL: It must be tailored to the needs and context of country at stake. Nevertheless, one thing is obvious: It is all about who conduct CPL. As Joseph Stalin famously said (in a negative context): "It is not important how people vote, rather who and how will count votes".⁵⁵ Unfortunately, this stands true in the context of CPL too. It is not only important to have well-designed methodology for CPL but what is more important to implement it in practice. At the end of the day, these all is about existence or lack of Political Will.

The CPL is largely connected with political corruption and state capture in a sense that quite often corruption takes place in parliaments by adopting such legislative acts which create opportunities for corruption or legalizes corruption. This is the very essence of CPL. Nevertheless, well-designed and tested CPL regulations can minimize that kind of risks.

Very Important aspect for raising effectiveness of CPL is proper communication of the concept and conducted work to media and the people. Professional but at the same easy to understand language of communication with media can further legitimize CPL and create strong support from the side of public and media. Yet, on many occasions it has been observed across Eurasian region that those who conduct CPL fail to properly communicate it.

As James Robertson and Daron Acemoglu, world-famous economists, famously put in their ground-breaking study "Why Nations Fail": "*Poor countries are poor because those who have power make choices that create poverty. They get it wrong not by mistake or ignorance but on purpose*"⁵⁶ and within this context CPL comes to play a crucial role by detecting 'wrong choices' in legal acts, choices 'that create poverty'.

As James Robertson and Daron Acemoglu famously put in their ground-breaking study "Why Nations Fail": "*Poor countries are poor because those who have power make choices that create poverty. They get it wrong not by mistake or ignorance but on purpose*".⁵⁷

⁵⁵ <https://sergedid.livejournal.com/407184.html>

⁵⁶ <http://norayr.am/collections/books/Why-Nations-Fail-Daron-Acemoglu.pdf>, page 83

⁵⁷ <http://norayr.am/collections/books/Why-Nations-Fail-Daron-Acemoglu.pdf>, page 83

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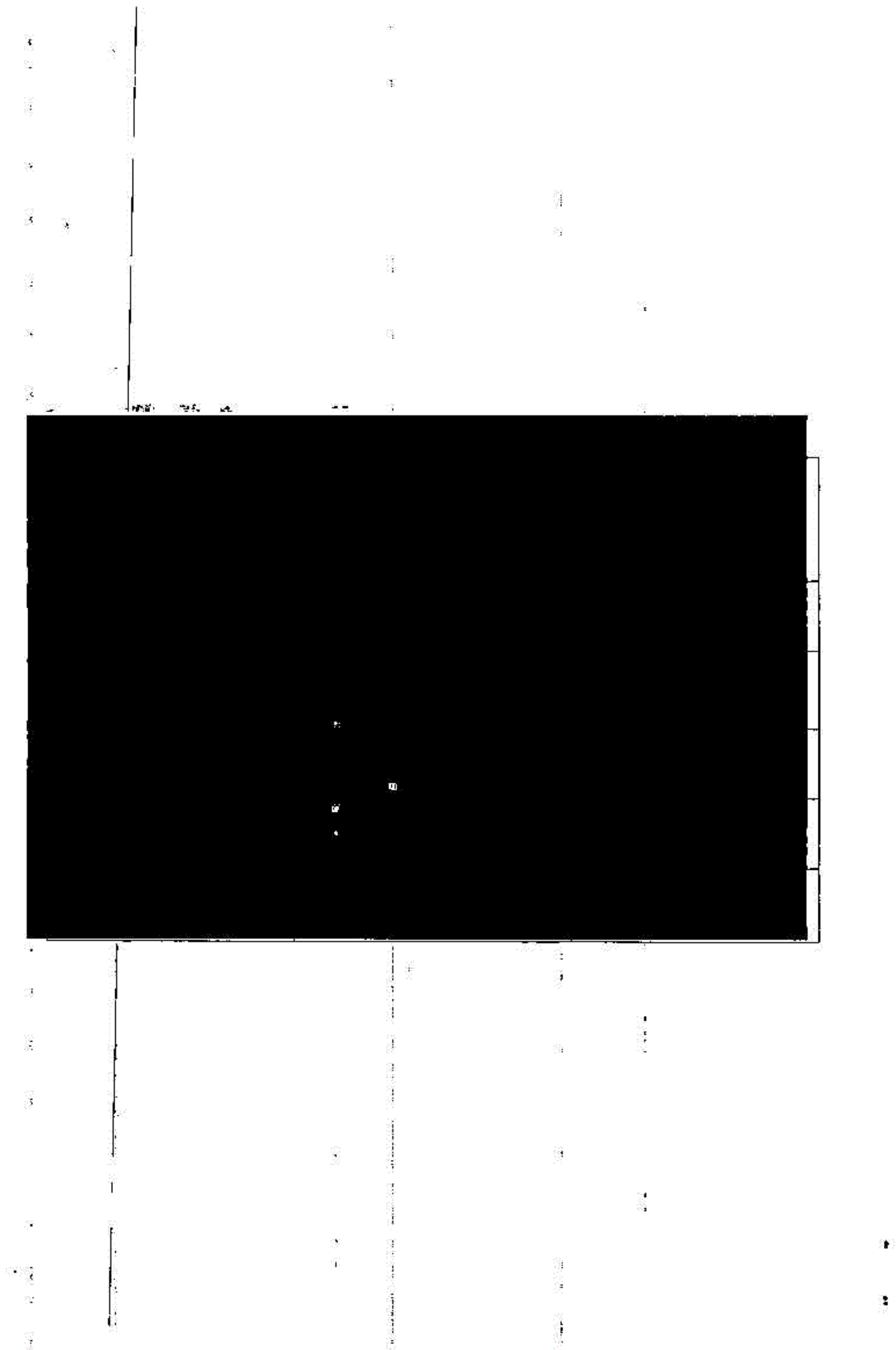
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Table 7. Checklist on Corruptogenic Factors in Ukraine

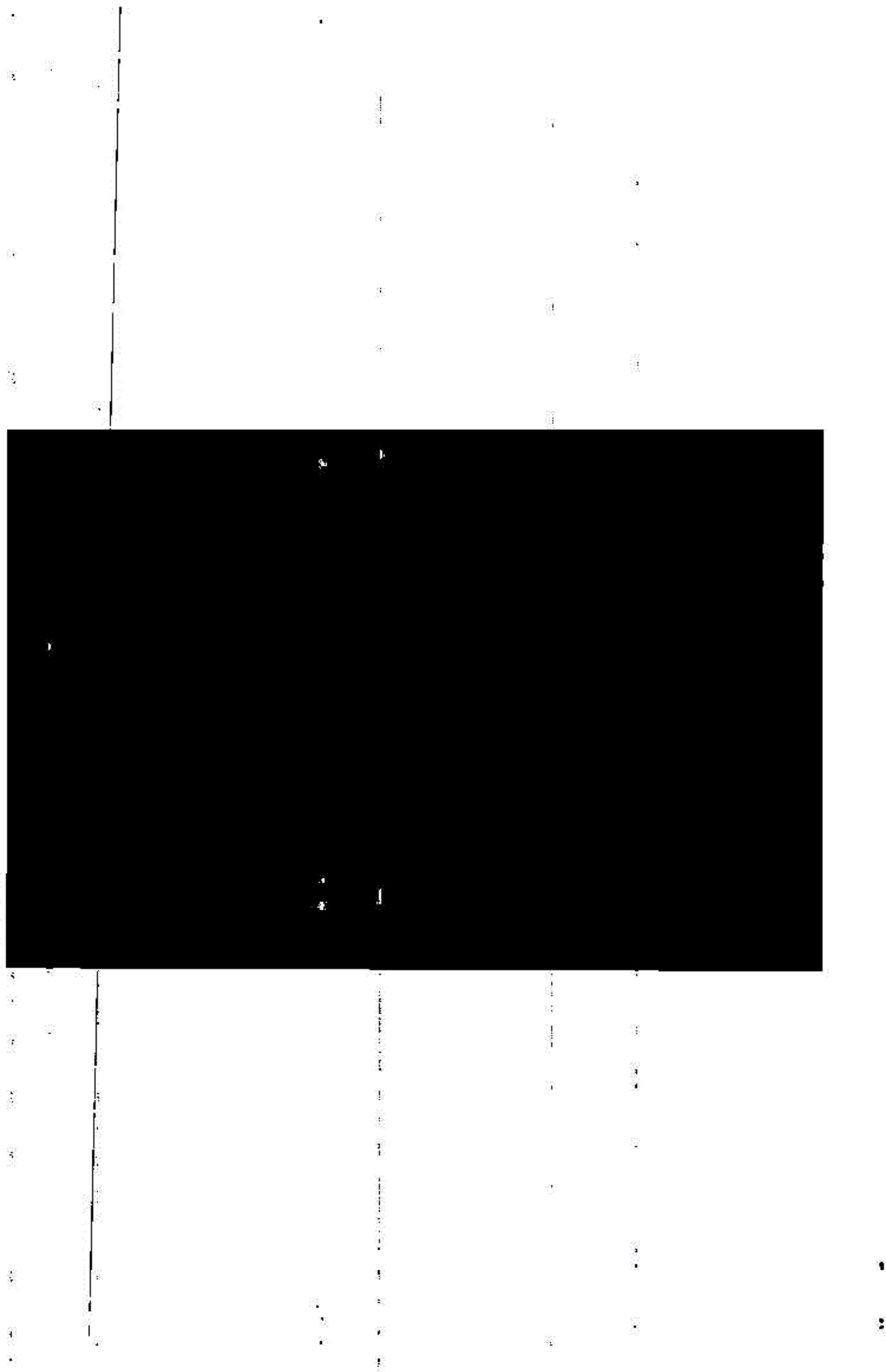
Table 8. Corruption Risk Assessment Checklist of CPL Methodology of North Macedonia

Table 9. Corruption Risks according to Albanian CPL Methodology

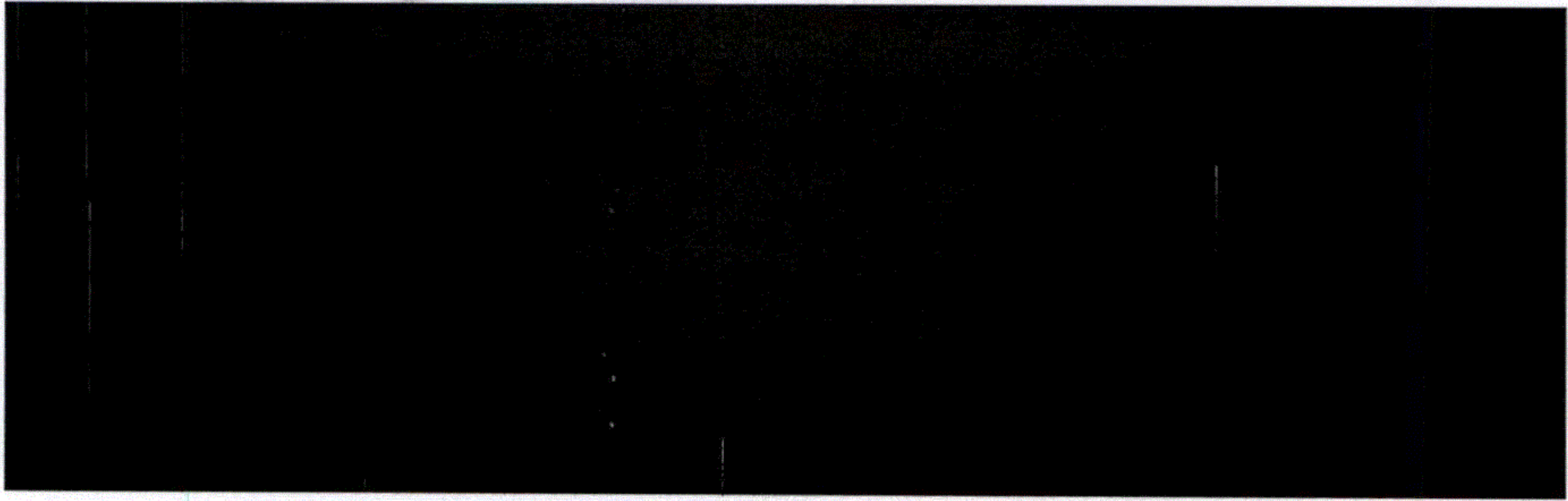
Box 1 and 2. ACAL in practice: examples







Handwritten text on lined paper, appearing to be a list or index. The text is written in cursive and is mostly illegible due to the quality of the scan. Some words like "List", "Index", and "Table" are faintly visible.



Handwritten text on lined paper, continuing from the top section. The text is written in cursive and is mostly illegible due to the quality of the scan. Some words like "List", "Index", and "Table" are faintly visible.