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Promoting Transparency and Accountability

in Public Administration in North Macedonia



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# Sectorial Integrity and Corruption Risk Assessment

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## METHODOLOGY

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# Sectorial Integrity and Corruption Risk Assessment Methodology

## General Provisions

### 1. Background

The Action Plan of the Public Administration Reform Strategy 2018-2022 of the North Macedonia (RNM) <sup>1</sup> pursues strengthening the integrity of institutions, requiring an analysis of the integrity and ethics implementation at the political and professional level, as a prerequisite for the risk management mechanism, as well as policy upgrade and monitoring based on clearly defined indicators. To this end, the EU-funded Project *Promoting Transparency and Accountability in Public Administration in North Macedonia* commissioned the preparation of recommendations for drafting a concept of integrity, as well as a Methodology for corruption risk assessment to be implemented by the State Commission for Prevention of Corruption (SCPC) in selected sectors. In July 2020 an Inception Report on Sectorial Corruption Risk Assessment Methodology for the SCPC of the RNM described the alternatives available to implement such a tool.

Although it was always perceived as a natural area of expertise of the SCPC, corruption risk assessment was made part of the risk management, prescribed to the public institutions by public internal financial control (PIFC)<sup>2</sup> legislation from 2011, the implementation of which was entrusted to the Ministry of Finance and internal audit units. The 2019 Law on prevention of corruption and conflicts of interests<sup>3</sup> was passed in the RNM provided in Article 17 item 17 for the competence of the SCPC to *prepare analysis of the risks of corruption in different sectors*, while item 18 from the same article provides that the SCPC *undertakes activities in the direction of strengthening personal and institutional integrity*.

Having considered all of the above, the Methodology for Sectorial Integrity and Corruption Risk Assessment (SICRA) was developed, for it to be implemented by the SCPC.

### 2. Scope

The scope of the SICRA Methodology is intended to cover sectors related to public institutions' activity.

### 3. Stages of Sectorial Integrity and Corruption Risks Assessment (SICRA)

The Stages of SICRA are:

- 1) Selecting the Sector to conduct SICRA
- 2) Identifying Integrity Risks in the Selected Sector
- 3) Identifying Corruption Risks in the Selected Sector
- 4) Describing Integrity and Corruption Risk Factors in the Selected Sector
- 5) Sectorial Integrity and Corruption Risks' Management

### 4. Defining the terms used in the Methodology

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<sup>1</sup> Under priority area 3: Responsibility, Accountability and Transparency, Special Objective 3.3.: Strengthening the Integrity of the Institutions, Measure 3.3.1. Strengthening the integrity and ethics at the political and professional level.

<sup>2</sup> Law on public internal financial control (Official Gazette No.90/2009, 12/2011 and 188/2013)

<sup>3</sup> Law on prevention of corruption and conflicts of interests ("Official Gazette of the Republic of Macedonia" No. 12/19)

In line with the 2019 Law on Prevention of Corruption and Conflict of Interest (“Official Gazette of the Republic of Macedonia”, No.12/2019):

*integrity* means legal, independent, impartial, ethical, responsible and transparent performing of activities with which official persons protect their reputation and the reputation of the institution they are responsible for, i.e. are employed in, remove risks and remove the suspicions for possibilities of occurring and development of corruption and thus they provide confidence of the citizens in the performing of the public functions and in the work of the public institutions.

*public interest* means protection of basic freedoms and human rights recognized by the international law and determined by the Constitution of the Republic of Macedonia, prevention of risks for health, defence and security, protection of environment and nature, protection of property and freedom of market and entrepreneurship, rule of law and prevention of crime and corruption.

*corruption risk* means any kind of internal or external weakness or a process that may constitute an opportunity for occurrence of corruption within state bodies, public enterprises and other public sector institutions, which includes issues of conflict of interests, incompatibility of functions, receipt of gifts and other illicit payments, lobbying, lack of whistle-blower protection system, fraud, inappropriate use of powers, discretionary authorizations, financing of political parties and campaigns against the law, trading and unauthorized use of information, transparency of procedures and documents and other issues relevant for the integrity.

*official person* means all elected or appointed persons and public sector employees.

*official duty* means the sum of obligations that a person is obligated to undertake and which derive from the performance of a certain function or profession or the official position of the person.

In line with the Integrity Concept proposal:

*integrity climate* is the corruption-free environment in which public and private institutions function, achieved through implementation of the integrity requirements.

*professional integrity* means performing official duties with integrity and through constant adherence to shared ethical values, principles and norms for upholding and prioritizing the public interest over the private interest at the workplace.

*institutional integrity* implies all official persons in a public institution, managers and employees, acting with professional integrity.

*sectoral integrity* represents the activity of all institutions in a sector unfolded with institutional integrity (examples of broader sectors: public, political, private; examples of narrower sectors: healthcare, education, law-enforcement, judicial etc.).

Additionally, to the above definitions, for the purposes of this Methodology it is further clarified that:

*integrity risk* means the threat to professional, institutional, sectoral integrity due to failure of public officials (managers and employees) to observe the integrity climate;

*risk factor* means the circumstance of any kind enabling, encouraging, causing and/or perpetuating corruption and lack of integrity risks in a given sector.

## First Stage: Selecting the Sector to conduct SICRA

### 5. Criteria for selecting the sector

Considering the variety and multitude of public sector institutions, the SCPC shall prioritize for SICRA the sectors whose public institutions fall under one or several of the following selection criteria:

- Statistical criterion
- Financial criterion
- Patrimonial criterion
- Discretionary criterion
- Contact with the citizens'/clients' criterion
- Vulnerability criterion

#### 5.1 Statistical criterion

The statistical criterion is based on the availability of statistical data showing high perceived or experienced levels of on the corruption. The sources for the identification of sectors according to this criterion are:

- National and international surveys, polls, indexes and other research on the perception and/or experience of citizens of the RNM on the levels of corruption in the respective sector;
- Data on the detection, investigation and conviction of official persons from the public sector institutions, contained in the official reports and other information of the investigators, prosecutors and courts.

#### 5.2 Financial criterion

According to the financial criterion, sectors will be selected in which the mandates of their public institutions imply conducting activities related to large money flows, such as contribution to formation or execution of the national or local public budgets, allocating EU and/or other external assistance funds, imposing administrative and/or misdemeanour fines, collecting official fees foreseen for public services' rendering, issuance of authorizations, permits etc., as well as involvement with any other substantive financial activities.

#### 5.3 Patrimonial criterion

According to the patrimonial criterion, sectors will be selected in which the mandates of their public institutions imply oversight/supervisions, management, including through lease, concession and/or selling of assets entrusted to the central or local public administration, either from the public or private domains of the state property. This criterion applies to sectors in which the public institutions handle both assets of considerable value and of lower value, if it implies frequent actions with regards to such assets or if the cumulative value of these is considerable.

#### 5.4 Discretionary criterion

According to the discretionary criterion, sectors will be selected in which the mandates of their public institutions imply broad discretionary powers of interpreting and enforcing legal provisions, of sanctioning, of restricting or of declining the possibilities for the citizens to pursue their legitimate or illegal interests, exercising their rights and fundamental freedoms, of settling

interpersonal disputes, of deciding on patrimonial issues of private persons, in line or against their interests.

### **5.5 Contact with the citizens'/clients' criterion**

According to the contact with the population criterion, sectors will be selected in which the mandates of their public institutions imply a lot of direct contacts with the clients, in the course of which both the official persons and the citizens'/clients enjoy broad opportunities of initiating the breach of the legal procedure in exchange for inappropriate benefits.

### **5.6 Vulnerability criterion**

According to the statistical criterion, sectors will be selected in which the public institutions conduct activities in areas considered to be vulnerable to corruption. The sources for the identification of sectors according to this criterion are:

- National and international research, assessments, studies and other analysis, finding the vulnerability of the public institutions from the given sector;
- Reports of the Supreme Audit Institution finding irregularities in the sector.

## **6. Choosing public institutions from the selected sector**

After selecting the sector, the public institutions of which meet one or several criteria mentioned under paragraph 5, SCPC determines the exact list of public institutions from that sector to be covered by SICRA. SCPC should tend to include all or most of the public institutions from the sector, or a representative sample of these institutions (by size, territory, hierarchy). If a sector contains a small number of institutions – all of them shall be included in the assessment.

The management of the institutions shall be announced that they were included in the sample of institutions from the sector selected by the SCPC for SICRA, as well as the type of cooperation required to this end.

## **Second Stage: Identifying and Describing Integrity Risks in the Selected Sector**

### **7. Integrity climate risk factors**

Once the sector is selected, the SCPC identifies the threats (risks) to integrity climate in the public institutions from the selected sector and the factors generating these risks. There are several types of risk factors:

- External factors,
- Internal factors,
- Institutional factors,
- Individual factors.

#### **7.1 External (regulatory) factors**

External factors are outside the scope of action and control of the public institutions from the selected sector and therefore cannot be blamed for them. These are regulatory factors, i.e.:

- lack or insufficient regulations,
- unclear regulations and/or contradictory regulations of integrity requirements applicable to public officials from the respective sector,
- unclear regulations and/or contradictory regulations affecting the activity and exercise of duties (working processes) of the institutions from the sector.

## 7.2 Internal factors

Internal factors are organizational, control and sanctioning risk factors, falling within the scope of action of the assessed institutions from the selected sector and which are usually the result of its failure to act, i.e.:

- inadequate internal policies and procedures,
- systematic failure to observe policies and procedures, including anti-corruption ones,
- lack of reporting/alerting systems in case of breaches,
- faulty management, in which the managers either do not recognize at all the corruption in their entity or facilitate it,
- inadequate/lacking procedures of supervision, control and sanctioning,
- lack of rules and procedures promoting ethics and integrity,
- poor organizational culture,
- other factors.

## 7.3 Institutional factors

Institutional factors are factors arising in the work process of the assessed institution from the selected sector, i.e.:

- non-transparent decision-making processes,
- bad management of the working processes,
- limited/absent knowledge of procedures,
- failure to apply procedures,
- excessive discretion and personal autonomy of the employee in taking decisions,
- inadequate supervision,
- broader real duties than formally assigned,
- other factors.

## 7.4 Individual factors

Individual factors are factors that can motivate certain individuals inside the assessed institutions in the selected sector to engage in corrupt and unethical practices and to act against the integrity climate of the institution, i.e.:

- lack of professional integrity,
- professional ignorance,
- inappropriateness of the employee for his/her entrusted duties,
- work under pressure,
- inadequate behaviour towards clients,
- perceived lack on equity at the work place.

## 8. Methods of identification of integrity risks and risk factors

In line with this Methodology, integrity risks and risk factors will be identified by the SCPC through:

- a) legislative analysis of corruption risks and risk factors – to identify external factors;
- b) analysis of practices of institutions from the selected sector – to identify internal, institutional and individual factors.

Both methods are structured according to the integrity climate elements in the public sector, as described in the proposed Integrity Concept:

- Merit-based employment, promotion, leadership and rewards

- Respecting incompatibilities and restrictions
- Submitting statement of property status and interests
- Management of conflict of interests
- Rules on gifts
- Codes of ethics
- Transparency, openness and access to information of public interest
- Transparent public procurement and efficient resource management
- Post-employment restrictions (pantouflage)
- Whistle-blowers' protection
- Intolerance of integrity violations

### **9. Legislative analysis of corruption risks and risk factors**

The detailed steps for the analysis and description of the external (regulatory) risks shall be carried out by SCPC using the instructions and matrixes included in Annex 5.

### **10. Analysis of practices of institutions from the selected sector**

Analysis of the the practices in the public institutions from the selected sector shall be carried out by the SCPC on the bases of questioning the managers (see Annex 2) and employees (see Annex 3) of these institutions, as well as the integrity controlling institutions (see Annex 4).

In line with the proposed Integrity Concept, there are several levels for achieving integrity, which are transposed in this Methodology, in order to assess the integrity risks arising due to internal, institutional and individual factors. The questionnaires will identify the integrity risks in the institutions following the duties of the stakeholders involved in ensuring the integrity climate:

- Building integrity climate (duty of the managers and employees of the public institutions)
- Supporting the integrity climate development (duty of the managers, in which they can be assisted by other state bodies, international organizations and NGOs)
- Controlling integrity climate observance (duty of the managers and of the integrity controlling institutions).

#### **10.1 Threats to integrity climate building due to non-compliance with integrity requirements**

The threats to integrity climate building due to non-compliance with integrity requirements shall be identified on the basis of a questionnaire for the managers and for the employees of the public institutions from the selected sector.

For this purpose, the managers shall be required to fill out a questionnaire (see Annex 2) which they will be requested to sign, while the employees – an anonymous questionnaire (see Annex 3), to reveal the threats to the elements of the integrity climate mentioned in item 8 above.

#### **10.2 Threats to sectorial integrity due to failure of the managers to support integrity climate development**

Besides threats to building integrity climate in the public institutions from the selected sector, threats to sectorial integrity due to the failure of managers to support integrity climate development should be also identified. Questions to this end are included in the Questionnaire for managers (Annex 2).



### 10.3 Threats to sectorial integrity due to failure of the managers to ensure adequate integrity control

Additional to threats to building integrity climate and threats to sectorial integrity due to the failure of managers to support its development, the threats due to inadequate integrity control in the public institutions from the selected sector should be also identified.

The integrity areas for the control of which only the managers of the public institutions are responsible are the implementation of the ethical rules and conducting Corruption Risk Assessment in the institution. Failure to secure these exclusively entrusted control actions represent in itself a threat to integrity of the public institution and of the entire sector the institution belongs to. Questions to this end are also included in the Questionnaire for managers (Annex 2).

### 10.4 Threats to sectorial integrity revealed by integrity controlling institutions

However, as observance of different integrity requirements is also subject to external control, a special questionnaire (Annex 4) will be sent to integrity controlling institutions, i.e.:

*Special Commission for the Prevention of Corruption*, responsible for control of:

- Respecting incompatibilities and restrictions
- Submitting statement of property status and interests
- Management of conflicts of interest
- Rules on gifts
- Transparent public procurement and efficient resource management
- Post-employment restrictions (pantouflage)
- Whistle-blowers' protection
- Sanctioning integrity-related violations (misdemeanours)

*State Administrative Inspectorate*, responsible for control of:

- Merit-based employment, promotion, leadership and rewards
- Rules on gifts
- Transparency, openness and access to information of public interest
- Transparent public procurement and efficient resource management

*Agency for Protection of the Right to Free Access to Information*, responsible for control of:

- Transparency, openness and access to information of public interest

*Public Procurement Bureau*, responsible for control of:

- Transparent public procurement and efficient resource management

*State Audit Office*, responsible for control of:

- Transparent public procurement and efficient resource management

*Ministry of Justice*, responsible for control of:

- Whistle-blowers' protection.

## 11. Collecting and analysing the data from the questionnaires

The SCPC shall send out the questionnaires to the public institutions from the selected sector, requesting that the questionnaire for managers to be signed (see Annex 2), while anonymity for the employees filling out their corresponding questionnaire is guaranteed (Annex 3).

The data from these questionnaires should be analysed and described, as explained in item 12 below.

Provided that the SCPC conducts sectorial assessment of a multitude of public institutions at the same time, this implies a considerable number of questionnaires to be distributed, collected and processed, so that all the answers collected to each question to be quantified separately. Best way to do it is through programming of the questionnaires online and automatic systematizing the answers into a consolidated document. This will save lots of time for SCPC to focus on analysis rather than logistics.

To this end, the questionnaires contain algorithms, depending on which answering of subsequent questions are necessary or not. Most of the questions require “yes” or “no” answers, which can be easily converted into statistics. Some options require a narrative answer, aimed at collecting a minimum of evidence to prove the progress or shortcomings in securing the integrity climate in the institutions. The employees are required to give a mark to the implementation of integrity climate requirements in the institution, using a 1 to 10 scale, in which 1 is describing the worst scenario and 10 – the best scenario of implementing the integrity requirement in the institution. The average value of these answers will have to be assessed, allowing a comparative scoring of institutions from the same sector and an overall score to be determined for the entire sector in terms of observing the integrity requirements. The managers’ and employees’ questionnaires are build in such a manner, as to allow an objective assessment of the situation, using two sources: the open, official one, undersigned by the manager, presenting most probably the optimistic version, while the anonymous sources from among the employees might reveal a more realistic situation. Finally, the answers to the questionnaires from the integrity controlling institutions added to each respective integrity requirement analysis, will allow for further balancing of the presented information with the observance of integrity requirements in the public institutions from the selected sector under review.

While programming the questionnaires, it is important to make sure that the managers cannot influence the answers provided by the employees, without the SCPC having to personally monitor the process of anonymous questioning of employees in each institution.

The primary processing of the answers to all the questionnaires received from the managers and those from the employees shall be done automatically and these documents will have to be attached to the final report (see Annex 1, structure

## 12. Sectorial integrity risk factors, severity and recommended actions

After the integrity and corruption risks to the selected sector have been identified, at this stage the sectorial integrity risks generating corruption shall be described.

To this end, each threat to integrity climate included in item 7 above will be developed, as per the findings collected from the questioning of the institutions from the selected sector (see questions 1-11 from the Annexes 2 and 3) and from the questioning of the integrity controlling institutions (Annex 4). Each descriptive narrative of an identified integrity threat shall be provided with at least one qualification of the types of risk factors, corruption risks, probability (high, medium, low) and recommended actions, as per the template bellow:

<b>Type of risk factor</b> (indicate specific external, internal, institutional or individual factors)	<b>Corruption risk</b> (corruption acts)	<b>Probability</b> (high, medium or low)	<b>Recommended action</b>

## Third Stage: Identifying and Describing Corruption Risks in the Selected Sector

### 13. Corruption risks

Through the second stage of SICRA, SCPC identified the threats to integrity posed by insufficient administrative action aimed at building, supporting and controlling the integrity climate in the public institutions from the selected sector. In the third stage of SICRA, the SCPC identifies the corruption risks in the public institutions from the selected sector, based on available information about corruption acts.

The information can point to the fact that certain corruption acts have certainly occurred in the sector, other information can point to the fact that there is rather a perception which is more or less spread about corruption in the sector.

Therefore, from the point of view of their materialization, the corruption risks shall be identified as:

- past proven, and
- future probable.

### 14. Past proven corruption risks

*Past proven risks* are corruption risks for which there is evidence of having materialized in the past.

Information on past proven corruption risks is taken from known facts of sanctioning for corrupt and/or unethical behaviour, public exposure by whistle-blowers of corruption cases and/or of practices lacking integrity within the public institutions from the selected sector, that have generated acts of corruption.

### 15. Future probable corruption risks

*Future probable risks* are corruption risks for which there is no direct evidence of having materialized in the past, but for which there exist indirect indications, such as: perception surveys, opinion polls, corruption proofing opinions, reports and opinions expressed by international and/or Macedonian organizations, including civil society organizations, etc.

Depending on the number of sources confirming them, future probable risks can be further divided into:

- highly probable future risks (three or more sources) and
- still probable future corruption risks (one or two sources).

### 16. Sectorial corruption risk factors and their impact on human rights

The threats to integrity climate in the public institutions from the selected sector generate past proven and probable in the future corruption risks (for details, see items 11 and 12 above).

At this stage corruption risk factors are also provided a narrative description and a qualification, according to a heat matrix, assessing the impact of the corruption risks.

#### 16.1 Overall corruption factors

After the description of the integrity threats, at this point the major (overall) corruption risks and the factors generating them shall be described. The narrative is given a qualification in a heat matrix.

### 16.2 Heat Matrix

Each of the identified corruption risk will be further described in the SICRA from the perspective of its impact, using a “heat” matrix. The assessed impact of the identified corruption risks will fall under one of the following categories: severe (dark red), high (red), medium (orange), low (yellow). The corruption risk impact assessment is carried out based on the combination of risks from the point of view of their known materialisation and their effect on the exercise of rights and interests, as per the “heat” matrix below.

The risk is considered as *materialised in the past and highly probable in the future* if the materialisation of the risk was confirmed several times in the past (convictions, sanctions imposed, public exposure by insiders etc.), according to the materials of the SICRA.

The risk is considered as *materialised in the past and still possible in the future* if the materialisation of the risk was confirmed once in the past (convictions, sanctions imposed, public exposure by insiders etc.), while there is also indirect evidence of it (perception surveys, opinion polls, reports and opinions).

The risk is considered *highly probable in the future* if there are multiple indirect sources confirming its materialisation, but none directly confirming it for sure in the past.

The risk is considered *still probable in the future* if there is a single indirect source of its existence.

As for the types of human rights concerned, for the purposes of this SICRA, absolute and relative human rights have the following meanings:

- *absolute* shall mean fundamental human rights which are, usually not allowed to be restricted, save for cases when absolutely necessary (such as right to life, health, right against torture and inhuman or degrading treatment, right to liberty and security, right to a fair trial, right to effective remedy, non-discrimination, right to hold religious and non-religious beliefs etc.).
- *relative* shall be considered those fundamental human rights and freedoms for which, in certain conditions, limitations are admissible to protect other people’s rights or the public interests (such as the freedom of association, freedom to manifest religion or belief, right to personal freedom, freedom of expression, right to respect for private and family life etc.)

MATRIX OF ASSESSING THE IMPACT OF CORRUPTION RISKS		TYPE OF ENTITLEMENTS AFFECTED BY THE RISK					
		absolute	absolute and relative	absolute and other	relative and other	relative	other
POTENTIAL OF THE RISK FOR	materialised in the past and highly probable in the future	Severe	Severe	Severe	High	High	Medium
	materialised in the past and still probable in the future	Severe	Severe	Severe	High	High	Medium

	highly probable in the future	High	High	High	Medium	Medium	Low
	still probable in the future	Medium	Medium	Medium	Low	Low	Low

## Fourth Stage: Sectorial Integrity and Corruption Risks' Management

### 17. Integrity and Anti-Corruption Plan

Based on the SICRA findings, a Sectorial Integrity and Anti-Corruption Plan shall be designed, together with representatives of the public institutions from the selected sector and their oversight institution.

The Sectorial Integrity and Anti-Corruption Plan shall determine at least two major objectives:

- Removing integrity threats through integrity climate building, supporting and controlling in the selected sector (based on the findings of stage 2)
- Removing corruption risk factors from the selected sector (based on the findings of stage 3).

The Sectorial Integrity and Anti-Corruption Plan shall be structured as follows:

- I. Objectives
- II. Monitoring and reporting mechanism
- III. Action Plan

Objective 1:				
No.	Action	Responsible institutions	Timeline	Indicators
Objective 2:				
No.	Action	Responsible institutions	Timeline	Indicators

## Annex 1: Structure of the SICRA Report

### I. INTRODUCTION

*[Explain the legal framework based on which SCPC conducts SICRA and provide general methodological explanations]*

### II. SECTOR SELECTION

*[Present arguments in favour of selecting this particular sector for SICRA using selection criteria from item 5 of the SICRA Methodology. List the public institutions from the selected sector assessed as part of the SICRA as mentioned in item 6 of the SICRA Methodology.]*

### III. SECTORAL THREATS TO INTEGRITY CLIMATE

#### III.1 Shortcomings in observing the integrity climate elements in the sector

*III.1.1 Merit-based employment, promotion, leadership and rewards*

*III.1.2 Respecting incompatibilities and restrictions*

*III.1.3 Submitting statement property status and interests*

*III.1.4 Management of conflicts of interest*

*III.1.5 Rules on gifts*

*III.1.6 Codes of ethics*

*III.1.7 Transparency, openness and access to information of public interest*

*III.1.8 Transparent public procurement and efficient resource management*

*III.1.9 Post-employment restrictions (pantouflage)*

*III.1.10 Whistle-blowers' protection*

*III.1.11 Intolerance of integrity violations*

*[Present statistics and findings from the questionnaires of managers, employees and integrity controlling institutions mentioned in sub-item 10.1 and annexes 2-4 of the Methodology. Describe the risk factors in the table from item 12 of the Methodology.]*

#### III.2 Lacking support to sectoral integrity through training, awareness raising and administrative actions

*[Present statistics and findings from the questionnaires of managers mentioned in sub-item 10.2. Describe the risk factors in the table from item 12 of the Methodology.]*

#### III.3 Internal integrity control functions exclusively entrusted to institution managers (ethics and self-assessment of corruption risks)

*[Present statistics and findings from the questionnaires of managers mentioned in sub-item 10.3. Describe the risk factors in the table from item 12 of the Methodology.]*

### IV. SECTORAL RISKS OF CORRUPTION

#### IV.1 Corruption risks due to regulatory factors

*[Present the main findings of the sectoral legislation analysis carried out according to Annex 5 Steps and matrixes for the identification of regulatory risk factors and corruption risks of the SICRA Methodology.]*

#### IV.2 Corruption risks due to internal, institutional and individual factors

*[List and describe the overall corruption risks identified according to items 13-16 and assess the impact in a Heat Matrix for each overall risk according to sub-item 16.2 of the SICRA Methodology.]*

### V. CONCLUSIONS AND RECOMMENDATIONS

#### LIST OF ANNEXES:

##### 1. Sectorial Integrity and Anti-Corruption Plan

*[Include the Action Plan drawn up according to item 17 of the SICRA Methodology.]*

**2. Aggregated answers to the managers' questionnaire**

*[List the answers to the Questionnaire from Annex 2 to the SICRA Methodology, preferable as automatically processed.]*

**3. Aggregated answers to the employees' questionnaire**

*[List the answers to the Questionnaire from Annex 3 to the SICRA Methodology, preferable as automatically processed.]*

**4. Matrix for the identification of regulatory risk factors and corruption risks**

*[Include the Matrix filled out according to Annex 5 to the SICRA Methodology.]*

## Annex 2: Questionnaire for Managers of the Public Institutions from the selected Sector

### Managers' Questions 1: Merit-based employment, promotion, leadership and rewards

**MQ1.1** Were annual employment plans adopted in the past 3 years, confirmed and accepted by the state body responsible for the budgeting of the institution? *(narrative)*

If yes, please provide the details of these plans: when were these adopted, by whom, when were they confirmed and accepted and by whom, how many positions were included in each of these plans and how many positions were occupied during the respective years. *(narrative)*

**MQ1.2** How was the merit-based promotion and rewarding implemented within the institution in the past 3 years? *(narrative)*

How many employees were promoted over the past 3 years? *(narrative)*

**MQ1.3** Do you believe there is sufficient understanding of the requirements related to merit-based employment, promotion and rewarding in your institution, by the staff in charge of these processes? *(yes/no)*

If yes, do you still believe additional training on the matter is required? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

### Managers' Questions 2: Respecting incompatibilities and restrictions

**MQ2.1** Have there been any situations of incompatibility of the employees (with exercising direct political activities during the working time and at the working place) identified in the institution in the past 3 years? *(yes/no)*

If yes, please describe them, indicate how many and how they were dealt with. *(narrative)*

If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)*. If yes, please indicate which administrative actions were these? *(narrative)*

**MQ2.2** Have there been any situations of restrictions of elected/appointed persons (i.e.: managing a company or institution as an owner or holding managing rights in the management board of a private company or institution) identified in the institution in the past 3 years? *(yes/no)*

If yes, please describe them and how they were dealt with. *(narrative)*

If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*

**MQ2.3** Did the elected/appointed persons notify the institution where about the legal entities in his/her ownership, in which he/she has shares or managing roles in the past 3 years? *(yes/no)* Are you aware of whether they have transferred the management rights to third parties? *(yes/no)*

If yes, please describe them and how they were dealt with. *(narrative)*



If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*

**MQ2.4** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements related to respecting incompatibilities and restrictions in the public office? *(yes/no)*

If yes, do you still believe additional training on the matter is required? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

### **Managers' Questions 3: Submitting statement property status and interests**

**MQ3.1** Have there been any violations of declaring the property status and interests to the SCPC and/or of reporting any changes to this status within the institution over the past 3 years? *(yes/no)*

If yes, please provide the details of these violations: what kind of employees, how many violations, how were these revealed and dealt with. *(narrative)*

If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*

**MQ3.2** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements related to submitting property status and interests? *(yes/no)*

If yes, do you still believe additional training on the matter is required? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

### **Managers' Questions 4: Management of conflict of interests**

**MQ4.1** Have there been any cases of notification of potential conflict of interest by the employees within the institution over the past 3 years? *(yes/no)*

If yes, please provide the details of these violations: what kind of employees, how many notifications and how were these dealt with? *(narrative)*

**MQ4.2** Have there been any violations of the management of conflict of interest within the institution over the past 3 years? *(yes/no)*

If yes, please provide the details of these violations: what kind of employees, how many violations, how were these revealed and dealt with? *(narrative)*

If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*

**MQ4.3** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements related to the management of conflict of interest? *(yes/no)*

If yes, do you still believe additional training on the matter is required? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

### **Managers' Questions 5: Rules on gifts**

- MQ5.1** Have there been any cases of notification by employees within the institution over the past 3 years of gifts that are connected with their work, other than protocolary and occasional gifts of non-significant value? *(yes/no)*  
If yes, please provide the details of how these cases were dealt with? *(narrative)*
- MQ5.2** Have annual reports on received gifts been submitted to the SCPC in the past 3 years? *(yes/no)* If yes, have there been instances of violations of the rules on gifts identified by the SCPC within the institution and how were these cases dealt with? *(yes – narrative/no)*  
If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ5.3** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements related to the rules on gifts? *(yes/no)*  
If yes, do you still believe additional training on the matter is required? *(yes/no)*  
If no, do you believe additional training on the matter is required? *(yes/no)*

### Managers' Questions 6: Codes of ethics

- MQ6.1** Have there been violations of ethics in the institution in the past 3 years? *(yes/no)*  
If yes, please provide the details of how these cases were dealt with? *(narrative)*  
If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ6.2** Have there been taken special measures to secure the implementation of the Codes of ethics in the institution? *(yes/no)*  
If yes, please describe. *(narrative)*
- MQ6.3** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements related to the Codes of ethics? *(yes/no)*  
If yes, do you still believe additional training on the matter is required? *(yes/no)*  
If no, do you believe additional training on the matter is required? *(yes/no)*

### Managers' Questions 7: Transparency, openness and access to information of public interest

- MQ7.1** Was the institution listed as a holder of public information by the Agency for protection of the right to free access? *(yes/no)*  
If yes, is the institution frequently requested to provide public information? *(yes/no)*  
If yes, what kind of information is usually being requested? *(narrative)*
- MQ7.2** Have there been instances of the institution's refusing individuals or legal entities to provide requested information in the past 3 years? *(yes/no)*  
If yes, on how many occasions? *(narrative)*  
If yes, was the institution sued in court to oblige it to nevertheless provide the information it refused to provide? *(yes/no)* If yes, what was the outcome of these cases? *(narrative)*

- MQ7.3** Which documents, information and data are disclosed by the institution at its own initiative in order to ensure transparency and accountability in the public sector? *(narrative)*
- MQ7.4** Have the institution been found in violation of the requirements of the Law on Free Access to Information in the past 3 years? *(yes/no)*  
If yes, what sanctions were imposed? *(narrative)*  
If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ7.5** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements related to transparency and accountability of the public sector through providing access to public information? *(yes/no)*  
If yes, do you still believe additional training on the matter is required? *(yes/no)*  
If no, do you believe additional training on the matter is required? *(yes/no)*

### **Managers' Questions 8: Transparent public procurement and efficient resource management**

- MQ8.1** Did the State Commission for the Prevention of Corruption inspect the public procurement documentation of the institution in the past 3 years? *(yes/no)*  
If yes, on how many occasions? *(narrative)*  
If yes, what was the outcome of these inspections? *(narrative)*
- MQ8.2** Have there been any reports on corruption in the public procurement from the employees to the State Commission for the Prevention of Corruption or to the Public Prosecutor's Office in the past 3 years? *(yes/no)*  
If yes, what was the outcome of these cases, Have any sanctions been imposed? *(narrative)*  
If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ8.3** Have there been statements by members of the public procurement commissions acknowledging existence of a conflict of interest in the past 3 years? *(yes/no)*  
If yes, how many? *(narrative)*  
If no, have there been later on found out conflicts of interests that were not stated? *(yes/no)* If yes, how many? *(narrative)* If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ8.4** Do you believe the employees who are members of the public procurement commission in your institution, as well as yourself, have sufficient understanding of the requirements related to public procurement and effective resource management? *(yes/no)*  
If yes, do you still believe additional training on the matter is required? *(yes/no)*  
If no, do you believe additional training on the matter is required? *(yes/no)*

## **Managers' Questions 9: Post-employment restrictions (pantouflage)**

- MQ9.1** Do you know cases when former employees were hired, within 3 years after leaving the post, in a trade company in which he/she exercised earlier supervision or established a contractual relationship while working in your institution? *(yes/no)*
- If yes, was the State Commission for the Prevention of Corruption notified of these cases? *(yes/no)* If yes, what was the outcome of these cases, Have any sanctions been imposed? *(narrative)* If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ9.2** Do you know cases when former employees acquired stocks or shares, within 3 years after leaving the post, in a legal entity in which he/she worked or exercised earlier supervision while working in your institution? *(yes/no)*
- If yes, was the State Commission for the Prevention of Corruption notified of these cases? *(yes/no)* If yes, what was the outcome of these cases, Have any sanctions been imposed? *(narrative)* If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ9.3** Do you know cases when former employees, within 2 years after leaving the post, advocated for international or other organization as its representative before the institution they used to work for? *(yes/no)*
- If yes, was the State Commission for the Prevention of Corruption notified of these cases? *(yes/no)* If yes, what was the outcome of these cases, Have any sanctions been imposed? *(narrative)* If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ9.4** Do you know cases when former employees, within 2 years after leaving the post, represented a legal or a natural person as its representative before the institution they used to work for? *(yes/no)*
- If yes, was the State Commission for the Prevention of Corruption notified of these cases? *(yes/no)* If yes, what was the outcome of these cases, Have any sanctions been imposed? *(narrative)* If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ9.5** Do you know cases when former employees were hired within 2 years after leaving the post, in legal entities to perform management or auditing activities, in which at least one year before the termination of the performance of public authorisations, in his/her work was related to a supervisory or monitoring function? *(yes/no)*
- If yes, was the State Commission for the Prevention of Corruption notified of these cases? *(yes/no)* If yes, what was the outcome of these cases, Have any sanctions been imposed? *(narrative)* If yes, were administrative actions taken to prevent similar violations in the future? *(yes/no)* If yes, please indicate which administrative actions were these? *(narrative)*
- MQ9.6** Do you believe the employees in your institution, including those who exercise supervision, monitoring and establish contractual relationships with trade companies, work in and supervise legal entities and natural persons as part of their official duties in the institution, as well as yourself, have sufficient

understanding of the requirements related to post-employment restrictions?  
(yes/no)

If yes, do you still believe additional training on the matter is required? (yes/no)

If no, do you believe additional training on the matter is required? (yes/no)

### **Managers' Questions 10: Whistle-blowers' protection**

**MQ10.1** Have there been any cases of protected internal reporting from employees who disclosed administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the past 3 years? (yes/no)

If yes, how were these cases dealt with? (narrative)

If yes, were administrative actions taken to prevent similar violations in the future? (yes/no) If yes, please indicate which administrative actions were these? (narrative)

**MQ10.2** Have there been any cases of protected public reporting from employees who disclosed administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the past 3 years? (yes/no)

If yes, how were these cases dealt with? (narrative)

If yes, were administrative actions taken to prevent similar violations in the future? (yes/no) If yes, please indicate which administrative actions were these? (narrative)

**MQ10.3** In your opinion, do the employees feel safe to make a protected internal reporting if they found out about administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the institution? (yes/no)

If no, were administrative actions taken to make the employees confident to disclose in a protected manner such wrongdoings in the future? (narrative) yes/no) If yes, please indicate which administrative actions were these? (narrative)

**MQ10.4** In your opinion, do the employees feel safe to make protected external reporting to the State Commission for the Prevention or Corruption if they found out about administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the institution? (yes/no)

**MQ10.5** In your opinion, do the employees feel safe to make protected external reporting to the Ombudsman if they found out about administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the institution? (yes/no)

**MQ10.6** In your opinion, do the employees feel safe to make protected external reporting to the Ministry of Internal Affairs if they found out about administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the institution? (yes/no)

**MQ10.7** In your opinion, do the employees feel safe to make protected public reporting to the journalists, on social media or elsehow if they found out about administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence in the institution? (yes/no)

- MQ10.8** Do you believe the employees of your institution, including yourself, have sufficient understanding of the requirements and protection available in case of protected reporting about administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence? *(yes/no)*  
 If yes, do you still believe additional training on the matter is required? *(yes/no)*  
 If no, do you believe additional training on the matter is required? *(yes/no)*

**Managers' Questions 11: Intolerance of integrity violations**

- MQ11.1** Were integrity violations of institutions' employees subject of investigations by the State Commission for the Prevention of Corruption in the past 3 years? *(yes/no)*

If yes, was the institution subsequently notified by the State Commission for the Prevention of Corruption to undertake measures against the employee who has violated the law, including conflicts of interest? *(yes/no)* If yes, was the Commission subsequently informed about the undertaken measures within 60 days as of receiving the notification? *(yes/no)* If yes, please describe. *(narrative)*

- MQ11.2** Did employees report crimes related to corruption by any other employee in the institution in the past 3 years? *(yes/no)*

If yes, was the Public Prosecutor's Office or Ministry of Internal Affairs notified subsequently? *(yes/no)* If yes, please provide details. *(narrative)*

- MQ11.3** Have there been any cases of criminal prosecution for crimes related to corruption allegedly committed by the management or employees in the institution in the past 3 years? *(yes/no)*

If yes, please provide details. *(narrative)*

If yes, were these violations also a disciplinary violation or a misdemeanour offence? *(yes/no)* If yes, were these employees brought to disciplinary or misdemeanour liability, accordingly? *(yes/no)* If yes, please provide details. *(narrative)*

- MQ11.4** How many disciplinary cases were initiated against employees in the past 3 years? *(narrative – number)* Of these, how many disciplinary cases were related to integrity violations? *(narrative – number)*

If you indicated disciplinary cases related to integrity violations, please, indicate the number of disciplinary cases for integrity violations for each of the categories bellow and the outcome/sanctions imposed:

<i>Area to which the integrity violations related to:</i>	<i>Disciplinary cases (number)</i>	<i>Sanctions imposed (narrative)</i>
<i>Merit-based employment, promotion, leadership and rewards</i>		
<i>Respecting incompatibilities and restrictions</i>		
<i>Submitting statement property status and interests</i>		
<i>Management of conflict of interests</i>		
<i>Rules on gifts</i>		
<i>Codes of ethics</i>		

*Transparency, openness and access to information of public interest*

*Transparent public procurement and efficient resource management*

*Post-employment restrictions (pantouflage)*

*Whistle-blowers' protection*

**MQ11.5** Do you believe the employees of your institution, including yourself, have sufficient understanding of the liability for integrity violations? *(yes/no)*

If yes, do you still believe additional training on the matter is required? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

### Managers' Questions 12: Integrity trainings, awareness raising and other

**MQ12.1:** Did you organize/initiate/request training or were you offered training, requested permission to allow training or requested to delegate employees to a training on integrity in the past 3 years? *(yes/no)* If yes, please indicate, per topics from the integrity areas specified below, on whose initiative did these trainings occur, how many trainings took place and how many employees attended:

<i>Integrity related topics of training carried:</i>	<i>Initiative of the management</i>		<i>Initiative of another state body, international organization or NGO</i>		
	<i>number of trainings</i>	<i>number of employees</i>	<i>number of trainings</i>	<i>number of employees</i>	<i>name of the initiating entity</i>
<i>Merit-based employment, promotion, leadership and rewards</i>					
<i>Respecting incompatibilities and restrictions</i>					
<i>Submitting statement property status and interests</i>					
<i>Management of conflict of interests</i>					
<i>Rules on gifts</i>					
<i>Codes of ethics</i>					
<i>Transparency, openness and access to information of public interest</i>					
<i>Transparent public procurement and efficient resource management</i>					
<i>Post-employment restrictions (pantouflage)</i>					
<i>Whistle-blowers' protection</i>					

<i>Intolerance of integrity violations and liability</i>					
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**MQ12.2:** Did you organize/initiate/request assistance to conduct awareness raising campaigns or was your organization offered to be a beneficiary of and awareness raising campaign on integrity issues for the employees in the past 3 years? *(yes/no)* If yes, please indicate, per topics from the integrity areas specified below, on whose initiative did these awareness raising campaigns occur, how many campaigns took place and their title:

<i>Integrity related topics of training carried:</i>	<i>Initiative of the management</i>		<i>Initiative of another state body, international organization or NGO</i>		
	<i>number of campaigns</i>	<i>campaign title/generic</i>	<i>number of campaigns</i>	<i>campaign title/generic</i>	<i>name of the initiating entity</i>
<i>Merit-based employment, promotion, leadership and rewards</i>					
<i>Respecting incompatibilities and restrictions</i>					
<i>Submitting statement property status and interests</i>					
<i>Management of conflict of interests</i>					
<i>Rules on gifts</i>					
<i>Codes of ethics</i>					
<i>Transparency, openness and access to information of public interest</i>					
<i>Transparent public procurement and efficient resource management</i>					
<i>Post-employment restrictions (pantouflage)</i>					
<i>Whistle-blowers' protection</i>					
<i>Intolerance of integrity violations and liability</i>					

**MQ12.3:** Did you initiate additional administrative actions to secure fulfilment of the integrity requirements in the above-mentioned areas by the employees, i.e.: guidelines, methodologies, software solutions, other? *(yes/no)* If yes, please, provide details. *(narrative)*

**MQ12.4:** Were you offered assistance with undertaking additional administrative actions to secure fulfilment of the integrity requirements in the above-mentioned areas by the employees, i.e.: guidelines, methodologies, software solutions, other, by another state body, international organization or NGO? *(yes/no)* If yes, please, provide details. *(narrative)*



### **Managers' Questions 13: Adequate integrity control**

**MQ13.1:** Are there ethical rules applicable to the employees from your institution? *(yes – name the norms/no)*

If yes, did you undertake administrative actions within the institution to check on the observance of these ethical rules by the employees? *(yes/no)* If yes, please describe. *(narrative)*

If no, did you consider the adoption of ethical rules to be followed by the employees? *(yes/no)* If yes, please describe. *(narrative)*

**MQ13.2:** Is there an internal auditor in your institution? *(yes/no)*

If yes, was he/she involved in corruption risk self-assessment of the institution in the past 3 years, based on the Risk Management Guidelines of the Ministry of Finance? *(yes/no)*

If no, what is the reason for not doing it? *(narrative)*

If yes, which were the main corruption risks in the institution that were identified? *(narrative)*

If yes, were actions planned internally to address the corruption risks identified in the corruption risk self-assessment of the institution? *(yes/no)* If yes, please describe the progress of their implementation. *(narrative)* If no, please explain why it wasn't.

**MQ13.3:** If self-assessment was carried out and a management plan was adopted Please, send the Corruption Risk Assessment document and the corruption risk management plan to the State Commission for the Prevention of Corruption, for it to be used as part of the Sectorial Integrity and Corruption Risk Assessment.

## Annex 3: Anonymous Questionnaire for Employees of the Public Institutions from the selected Sector

### Employees' Questions 1: Merit-based employment, promotion, leadership and rewards

**EQ1.1** Please describe the employment procedure within the institution you work for by assigning a score from 1 to 10, in which 1 means *“based on nepotism, conflict of interest, corruption, in which cronies of the management are selected”* and 10 means *“merit-based, transparent and fair, in which best candidates for the job are selected”*. (rank)

If your score is low, please explain or bring an example. (narrative)

**EQ1.2** Please describe the promotion and rewards practice within the institution you work for by assigning a score from 1 to 10, in which 1 means *“based on nepotism, conflict of interest, corruption, in which cronies of the management are promoted”* and 10 means *“merit-based, transparent and fair, in which best employees are promoted and accordingly rewarded”*. (rank)

If your score is low, please explain or bring an example. (narrative)

**EQ1.3** Do you believe that you and other employees have sufficient understanding of the merit-based promotion and rewarding rules applicable in the institution, enabling you to protect your rights in this regard? (yes/no)

If no, do you believe additional training on the matter is required? (yes/no)

**EQ1.4** Do you believe the management implements appropriate administrative actions to secure merit-based promotion and rewarding rules in the institution? (yes/no/don't know)

If yes, can you bring an example of such administrative action? (yes – narrative/no)

If no, which administrative actions you believe are necessary? (narrative)

### Employees' Questions 2: Respecting incompatibilities and restrictions

**EQ2.1** Please describe the level of respecting incompatibilities of the employees (with exercising direct political activities during the working time and at the working place) within the institution you work for by assigning a score from 1 to 10, in which 1 means *“management and/or employees carry out political activities freely during their working time and at their working place”* and 10 means *“management and/or employees never carry out political activities during their working time and at their working place”*. (rank)

If your score is low, please explain or provide examples. (narrative)

**EQ2.2** Please describe the observance of restrictions by elected/appointed persons (of managing a company or institution as an owner or holding managing rights in the management board of a private company or institution) by assigning a score from 1 to 10, in which 1 means *“appointed/elected persons in the institution I work for are commonly known for managing a company or institution as an owner or holding managing rights in the management board of a private company or*

*institution” and 10 means “I am not aware of any situations in which appointed/elected persons in the institution I work for are managing a company or institution as an owner or holding managing rights in the management board of a private company or institution”. (rank)*

If your score is low, please explain or provide examples. *(narrative)*

**EQ2.3** Do you believe that you and other employees have sufficient understanding of the requirements related to respecting incompatibilities and restrictions in the public office? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ2.4** Do you believe the management implements appropriate administrative actions to secure observance of the incompatibilities and restrictions requirements in the institution? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### **Employees' Questions 3: Submitting statement property status and interests**

**EQ3.1** Please, assess how you perceive the employees who are obliged to declare their property status and interests to the SCPC exercise this obligation within the institution you work for by assigning a score from 1 to 10, in which 1 means “I believe there are big problems related to the property status and interests of the employees who are under the obligation to declare them to the SCPC, as these employees enrich themselves illicitly at work from corruption” and 10 means “I believe all employees who are under the obligation to declare their property status and interests to the SCPC are honest and carry out properly their corresponding obligations”. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ3.2** Please, indicate which positions within the institution you work for are vulnerable to corruption and might generate illicit wealth from corruption, conflict of interest or other dishonest behaviour. *(narrative)*

**EQ3.3** Do you believe that you and other employees have sufficient understanding of the requirements related to submitting property status and interests? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ3.4** Do you believe the management implements appropriate administrative actions to secure observance of requirements related to submitting property status and interests in the institution? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### **Employees' Questions 4: Management of conflict of interests**

**EQ4.1** Please, assess how you perceive the employees who are obliged to declare their property status and interests to the SCPC exercise this obligation within the institution you work for by assigning a score from 1 to 10, in which 1 means “I believe there are big problems related to the property and interests status of the employees who are under the obligation to declare them to the SCPC, as these

*employees enrich themselves illicitly at work from corruption” and 10 means “I believe all employees who are under the obligation to declare their property and interests status to the SCPC are honest and carry out properly their corresponding obligations”. (rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ4.2** Please, indicate which positions within the institution you work for are vulnerable to corruption and might generate illicit wealth from corruption, conflict of interest or other dishonest behaviour. *(narrative)*

**EQ4.3** Do you believe that you and other employees have sufficient understanding of the requirements related to the reporting and management of the conflict of interest? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ4.4** Do you believe the management implements appropriate administrative actions to secure observance of requirements related to the reporting and management of the conflict of interest in the institution? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### Employees' Questions 5: Rules on gifts

**EQ5.1** Please, assess how you perceive the situation with respecting the rules on gifts within the institution you work for by assigning a score from 1 to 10, in which 1 means *“I think gifts are usually accepted or required by employees connected to their work, as gratitude”* and 10 means *“I am certain that employees never accept or require gifts connected to their work, they only accept protocolary or occasional gifts of non-significant value”*. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ5.2** Please, indicate which positions within the institution are mainly exposed to being offered gifts due to the nature of the work and why. *(narrative)*

**EQ5.3** Do you believe that you and other employees have sufficient understanding of the requirements related to the rules on gifts? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ5.4** Do you believe the management implements appropriate administrative actions to secure observance of requirements related to the rules on gifts in the institution? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### Employees' Questions 6: Codes of ethics

**EQ6.1** Please, assess how you perceive the situation with respecting the Codes of ethics within the institution you work for by assigning a score from 1 to 10, in which 1 means *“I think no ethical rules from the Code of ethics are ever followed by anyone in the institution, including the management”* and 10 means *“I am certain that employees and management always follow ethical rules”*. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ6.2** Please, assess how you perceive the situation of undue influences within the institution you work for by assigning a score from 1 to 10, in which 1 means “*managers instruct public sector employees to act contrary to the law all the time*” and 10 means “*managers respect the professionalism and impartiality of public sector employees, and never instruct them to act contrary to the law*”. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ6.3** Please, assess how you perceive the situation of taking advantage of official position for private gain within the institution you work for by assigning a score from 1 to 10, in which 1 means “*employees always take advantage of their status as administrative servants*” and 10 means “*all employees are honest and never take advantage of their status as administrative servants*”. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ6.4** Are you a member of the Government, a public official or administrative servant? *(yes/no)* If yes, were you required to sign a statement confirming adhering to the Government Code of Ethics or the Code of Administrative Servants, accordingly? *(yes/no)*

**EQ6.5** Do you believe that you and other employees have sufficient understanding of the requirements related to the rules on gifts? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ6.6** Do you believe the management implements appropriate administrative actions to secure observance of requirements related to the rules on gifts in the institution? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### **Employees' Questions 7: Transparency, openness and access to information of public interest**

**EQ7.1** Please, assess how you perceive the situation with respecting the transparency, openness and access to information within the institution you work for by assigning a score from 1 to 10, in which 1 means “*I think the institution where I work is totally not-transparent and it hides information of public interest*” and 10 means “*The institution I work for is transparent, open and always provides access to public information*”. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ7.2** Do you believe that you and other employees have sufficient understanding of the requirements related to the transparency, openness and free access to public information? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ7.3** Do you believe the management implements appropriate administrative actions to secure observance of requirements of transparency, openness and free access to public information in the institution? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### Employees' Questions 8: Transparent public procurement and efficient resource management

**EQ8.1** Please, assess how you perceive the transparency of public procurement and effective resource management within the institution you work for by assigning a score from 1 to 10, in which 1 means *"I think the institution always rigs procurement procedures and the resources are managed awfully bad"* and 10 means *"The institution conducts honest, transparent procurements and manages resources effectively"*. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ8.2** Please, assess how you perceive the situation of undue influences from the management in the procurement procedures within the institution you work for by assigning a score from 1 to 10, in which 1 means *"managers and/or other officials exercise unlawful influence in the procurement procedure to determine its outcome and winners all the time"* and 10 means *"managers and officials never interfere with the procurement procedure to influence its outcome and winners"*. *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

**EQ8.3** Are you a member of the public procurement commission in your institution? *(yes/no)*

If yes, do you ever receive verbal instructions from the management on the procurement procedure? *(yes/no)*

If yes, how often? *(all the time/sometimes/never)*

**EQ8.4** If you answered "yes" to the previous question in that you are a member of the public procurement commission, do you believe that you and other employees who are members of the public procurement commissions have sufficient understanding of the public procurement rules and effective resource management? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

**EQ8.5** Do you believe the management implements appropriate administrative actions to ensure fulfilment of the requirements of transparent public procurement and effective resource management? *(yes/no/don't know)*

If yes, can you bring an example of such administrative action? *(yes – narrative/no)*

If no, which administrative actions you believe are necessary? *(narrative)*

### Employees' Questions 9: Post-employment restrictions (pantouflage)

**EQ9.1** Are there public employees in your institution who supervise, monitor the activity of companies, and/or establish contractual relationships with companies? *(yes/no)*  
If yes, please, assess how you perceive the observance of post-employment restrictions of (working in companies previously supervised/monitored/establish contractual relationships with) within the institution you work for by assigning a score from 1 to 10, in which 1 means *"Our former employees usually go to work in the private sector for companies they used to supervise, monitor or establish contractual relationships with immediately after leaving the institution. In fact, I*

*believe they were already working for the benefit of these companies even before leaving the institution.” and 10 means “The former employees never go to work in the companies they used to supervise, monitor or establish contractual relationships with, at least not in the first 3 years after leaving the post”. (rank)*

If your score is low, please explain or bring an example. *(narrative)*

- EQ9.2** Please, assess how you perceive the observance of post-employment restrictions of (representing legal and natural persons before the institution) within the institution you work for by assigning a score from 1 to 10, in which 1 means “*Our former employees start representing natural or legal persons before the institution almost immediately after leaving the institution. In fact, I believe they were already working for the benefit of these persons even before leaving the institution.*” and 10 means “*The former employees never represent natural or legal persons before the institution, at least not in the first 2 years after leaving the post.*” *(rank)*

If your score is low, please explain or bring an example. *(narrative)*

- EQ9.3** Do you know cases when former employees were hired, within 3 years after leaving the post, in a trade company in which he/she exercised earlier supervision or established a contractual relationship while working in your institution? *(yes/no/not applicable, as there are no functions related to supervising trade companies in the institution)*

If yes, can you provide more details? *(yes – narrative/no)*

- EQ9.4** Do you know cases when former employees acquired stocks or shares, within 3 years after leaving the post, in a legal entity in which he/she worked or exercised earlier supervision while working in your institution? *(yes/no/not applicable, as there are no function implying working in or supervising legal entities in the institution)*

If yes, can you provide more details? *(yes – narrative/no)*

- EQ9.5** Do you know cases when former employees, within 2 years after leaving the post, advocated for international or other organization as its representative before the institution they used to work for? *(yes/no)*

If yes, can you provide more details? *(yes – narrative/no)*

- EQ9.6** Do you know cases when former employees, within 2 years after leaving the post, represented a legal or a natural person as its representative before the institution they used to work for? *(yes/no)*

If yes, can you provide more details? *(yes – narrative/no)*

- EQ9.7** Do you know cases when former employees were hired within 2 years after leaving the post, in legal entities to perform management or auditing activities, in which at least one year before the termination of the performance of public authorisations, in his/her work was related to a supervisory or monitoring function? *(yes/no)*

If yes, can you provide more details? *(yes – narrative/no/not applicable, as there are no supervising or monitoring functions in the institution)*

- EQ9.8** Do you believe that employees have sufficient understanding of their post-employment restrictions? *(yes/no)*

If no, do you believe additional training on the matter is required? *(yes/no)*

- EQ9.9** Do you believe the management implements appropriate administrative actions to ensure future observance of the post-employment restrictions? *(yes/no/don't know)*
- If yes, can you bring an example of such administrative action? *(yes – narrative/no)*
- If no, which administrative actions you believe are necessary? *(narrative)*

### Employees' Questions 10: Whistle-blowers' protection

- EQ10.1** Please, assess how you perceive the situation with respecting the whistle-blower's protection within the institution you work for by assigning a score from 1 to 10, in which 1 means "No employee would ever report internally in the institution an administrative wrongdoing, including criminal or corrupt activities against official duties and public interest, as he/she will have to face unpleasant consequences from the management (being sacked, disciplined, salary and other benefit cuts etc.)" and 10 means "Any employee feels totally confident to report internally in the institution any administrative wrongdoing, including criminal or corrupt activities against official duties and public interest, as he/she is certain that he/she will be protected and never suffer any sort of unpleasant consequences". *(rank)*
- If your score is low, please explain or bring an example. *(narrative)*
- EQ10.2** If you knew of an administrative wrongdoing, criminal or corrupt activities against the official duties, public interest, security and defence, to which institution would you feel safer to go in the first place in the second, third and forth (last) place to make a protected reporting about it: \_\_\_ your own institution, \_\_\_ State Commission for the Prevention of Corruption, \_\_\_ Ministry of Internal Affairs (police), \_\_\_ Ombudsman *(assign an order of your preference to each option: 1 (highest preference), 2, 3 and 4)*
- EQ10.3** Do you believe that employees have sufficient understanding of whistle-blower's protection which is legally available to them (i.e.: protected means of reporting about administrative wrongdoings, criminal or corrupt activities against the official duties, public interest, security and defence)? *(yes/no)*
- If no, do you believe additional training on the matter is required? *(yes/no)*
- EQ10.4** Do you believe the management implements appropriate administrative actions to secure protected internal reporting of administrative wrongdoing, including criminal or corrupt activities against official duties and public interest? *(yes/no/don't know)*
- If yes, can you bring an example of such administrative action? *(yes – narrative/no)*
- If no, which administrative actions you believe are necessary? *(narrative)*

### Employees' Questions 11: Intolerance of integrity violations

- EQ11.1** What do you think are the main causes of corruption in the kind of institutions you work for? *(narrative)* What is the best solution to fight corruption in the kind of institutions you work for? *(narrative)*
- EQ11.2** Do you know cases of corruption in the institutions of the kind you work for? *(yes/no)*
- If yes, was it possible for you to prevent these acts? *(yes/no)* If yes, did you prevent these acts? *(yes/no)* If no, did you report these acts? *(yes – indicate to*



*whom/no*) If no, what was the reason to not report? (*choose from: I did not know I had to / I didn't know where to report it / I was afraid to report it / I did not care to report it, it was not my business*)

**EQ11.3** Please, assess how you perceive the situation of corruption within the institutions of the kind you work for by assigning a score from 1 to 10, in which 1 means “*Institutions from this sector are totally corrupt*” and 10 means “*Institutions from this sector are corruption-free, functioning in an integrity environment*”. (*rank*)

If your score is low, please explain or bring an example. (*narrative*)

**EQ11.4** Please, assess how you perceive the situation with management’s intolerance towards integrity incidents within the institution you work for by assigning a score from 1 to 10, in which 1 means “*Our management is totally careless about integrity violations in the institution, as the management itself often violates integrity norms*” and 10 means “*The management in our institution is very strict about observing integrity, nobody goes unpunished if the integrity norms are violated. Our management is a good example to follow when it comes to integrity*”. (*rank*)

If your score is low, please explain or bring an example. (*narrative*)

**EQ11.5** Do you believe that employees have sufficient understanding of integrity violations and corresponding liability (disciplinary, misdemeanour and criminal)? (*yes/no*)

If no, do you believe additional training on the matter is required? (*yes/no*)

**EQ11.6** Do you believe the management implements appropriate administrative actions to prevent integrity violations in the institution? (*yes/no/don't know*)

If yes, can you bring an example of such administrative action? (*yes – narrative/no*)

If no, which administrative actions you believe are necessary? (*narrative*)

## Annex 4: Questionnaire for Integrity Controlling Institutions

The SCPC is conducting Sectorial Integrity and Anti-Corruption Assessment (SICRA) in the sector of *[indicate the sector]*, covering the following institutions *[list the public institutions from the selected sector]*.

To this end, please provide the following information on each of the element of the public integrity climate for which your institution\* is in charge of overseeing, monitoring and/or bringing to appropriate legal liability for violations:

1. Did your institution prepare analytical reports on the observance of the integrity element it is responsible for with regards to the public institutions from the selected sector? If yes, please share them for the purposes of SICRA.
2. Please, describe the main problems of the aforementioned institutions with implementing each of the integrity element your institution is responsible for. Are these issues common to the entire public sector or are they specific to these kinds of institutions?
3. Have there been violations to the integrity elements found in the past 3 years in the aforementioned institutions? If yes, which sanctions were imposed?
4. Was the institution in which violations of the integrity elements were found prescribed to take administrative measures to redress the situation and/or to prevent similar future violations? If yes, which were these prescriptions? Did the institution report back on the implementation of such prescriptions? Were you satisfied with the progress?
5. What would be your suggestions for the aforementioned institutions to improve observance of the integrity elements your institution is responsible for?

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**\*Note: Integrity Controlling Institutions and integrity requirements they are in responsible for:**

*Special Commission for the Prevention of Corruption*, responsible for control of:

- Respecting incompatibilities and restrictions
- Submitting statement of property status and interests
- Management of conflicts of interest
- Rules on gifts
- Transparent public procurement and efficient resource management
- Post-employment restrictions (pantouflage)
- Whistle-blowers' protection
- Sanctioning integrity-related violations (misdemeanours)

*State Administrative Inspectorate*, responsible for control of:

- Merit-based employment, promotion, leadership and rewards
- Rules on gifts
- Transparency, openness and access to information of public interest
- Transparent public procurement and efficient resource management

*Agency for Protection of the Right to Free Access to Information*, responsible for control of:

- Transparency, openness and access to information of public interest

*Public Procurement Bureau*, responsible for control of:

- Transparent public procurement and efficient resource management

*State Audit Office*, responsible for control of:

- Transparent public procurement and efficient resource management

*Ministry of Justice*, responsible for control of:

- Whistle-blowers' protection.

## Annex 5: Steps and matrixes for the identification of regulatory risk factors and corruption risks

### Preliminary clarifications

The most common Transparency International definition for corruption is abuse of entrusted power for private gain. Therefore, while several elements are required for corruption to appear, an important one is the existence of *entrusted powers* (to be read also as competences, functions, duties, responsibilities, mandate or other authority). The source of entrusted powers are laws, by-laws and regulations. The manner in which regulations institute powers is decisive for ways in which corruption is going to be manifested in the future. While some provisions setting up powers will make it easier to abuse them for private gain, others could render it nearly impossible.

Participants of an act of corruption are more inclined to take risks if the powers to be abused for private gain are wide, ambiguous or non-exhaustive. Otherwise said, the wider the discretionary powers, the higher the probability of corruption. The explanation of this is linked to traceability of corruption acts in the future. When there are no clear legal boundaries to entrusted powers, it is not possible to determine at a later stage that these have been crossed. Which is why, the temptation to take bribes in the exercise of such powers is higher, as the risk of being caught thereafter is lower. Whereas, if the boundaries of entrusted powers are very clear and the act of corruption entails crossing them the risk of identifying the abuse at any later stage is considerably higher and therefore corruption chances are lowered.

Another important aspect is to understand that entrusting powers is not only part of provisions called: "Powers", "Competences", "Duties", "Attributions" etc. They can be spotted in any part of a given regulation, such as related to procedures, control mechanisms, sanctioning and anything else. Any provision only exists to be enforced in one way or another. The clearer the provision, the clearer the expected manner of enforcing it and vice versa. In the end, any given provision casts certain powers on someone called to enforce it be it a public official, a police officer, a judge, an individual, a company or an organisation. Whenever these who were entrusted a power to enforce a provision are in pursuit for private gain, the temptation for abuse arises. However, inclination to follow such illegal temptations will greatly depend on how clear the boundaries were set, because obviously people are seldomly taking high risks<sup>4</sup>.

### PART I.

#### Special provisions on integrity requirements for the institutions from the selected sector, derogatory from the general integrity framework

#### **STEP 1: List the main legal acts regulating the activity of the public institutions from the selected sector.**

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<sup>4</sup> Technical Paper: Introducing corruption proofing to Tunisia, by Council of Europe Expert, Cristina Tarna, July 2020, as part of the Tunisia Anti-Corruption Project.

**STEP 2:** Indicate the provisions from these legal acts containing additional provisions on integrity requirements to those from the general integrity framework, on each of these elements:

1. General legal framework on merit-based employment, promotion, leadership and rewards		
Laws	By-laws	Articles
	<i>Law on Public Sector Employees</i>	4-13, 20a-23
	<i>Rulebook on compulsory elements of the public call for filling a job position in the public sector throughout application for employment, and the form, content and the manner of keeping a register of persons who provided false data in employment in public sector</i>	
	<i>Methodology on planning of the employment in the public sector pursuant to the principle of adequate and equitable representation and the content and the form of the annual plan for employment and report on implementation of the annual plan for employment</i>	
	<i>Law on Administrative Servants</i>	30-47, 85-97
	<i>Decree on implementation of the procedure for employment of administrative servants</i>	
	<i>Rulebook on the form and content of the internal note, the manner of submission of the application for promotion, performance of administrative selection and interviews as well as the way of scoring and the maximum number of points from the selection process, depending on the category of work</i>	
	<i>Rulebook on performance semi-annual interview, the detailed criteria for the assessment of the administrative servants</i>	
	<i>Annual decisions on determination of the value of the single unit for calculation of the salaries of the administrative servants</i>	
1. Special sectorial legal framework on on merit-based employment, promotion, leadership and rewards		
Laws	By-laws	Articles
2. General legal framework on respecting incompatibilities and restrictions		
Laws	By-laws	Articles
	<i>Law on Public Sector Employees</i>	38
	<i>Law on Prevention of Corruption and Conflict of Interest</i>	44, 45, 49
2. Special sectorial legal framework on respecting incompatibilities and restrictions		
Laws	By-laws	Articles
3. General legal framework on submitting statement of property status and interests		
Laws	By-laws	Articles

<i>Law on Prevention of Corruption and Conflict of Interest</i>		82-86, 89-96
<b>3. Special sectorial legal framework on submitting statement of property status and interests</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<b>4. General legal framework on management of conflict of interests</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<i>Law on Prevention of Corruption and Conflict of Interest</i>		72-81
<b>4. Special sectorial legal framework on management of conflict of interests</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<b>5. General legal framework on rules on gifts</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<i>Law on Prevention of Corruption and Conflict of Interest</i>		58
<i>Law on Public Sector Employees</i>		39
	<i>Decree on the manner of utilization of the received gifts and management of the records of the received gifts and other issues related to the received gifts</i>	
<i>Law on Use and Disposal of State-Owned Property and Municipal Property</i>		55, 56
	<i>Decree on the criteria, the process of receiving and giving gifts and reporting of gifts</i>	
<b>5. Special sectorial legal framework on rules on gifts</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<b>6. General legal framework on Codes of ethics</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<i>Code on Ethics for the members of the Government and for the public officials appointed by the Government (Government Ethics Code)</i>		
<i>Code of Administrative Servants</i>		
<b>6. Special sectorial legal framework on Codes of ethics</b>		
<b>Laws</b>	<b>By-laws</b>	<b>Articles</b>
<b>7. General legal framework on transparency, openness and access to information of public interest</b>		

Laws	By-laws	Articles
<i>Law on Public Sector Employees</i>		10
<i>Law on Free Access to Public Information</i>		4, 6, 8-28
<b>7. Special sectorial legal framework on transparency, openness and access to information of public interest</b>		
Laws	By-laws	Articles
<b>8. General legal framework on transparent public procurement and efficient resource management</b>		
Laws	By-laws	Articles
<i>Law on Prevention of Corruption and Conflict of Interest</i>		38, 57
<i>Law on Public Procurement</i>		33-38, 41-42, 136, 169
<i>Law on Introduction of a Quality Management System and a Common Framework for Assessing Operations and Providing Services in the Civil Service</i>		5,6
<b>8. Special sectorial legal framework on transparent public procurement and efficient resource management</b>		
Laws	By-laws	Articles
<b>9. General legal framework on post-employment restrictions (pantouflage)</b>		
Laws	By-laws	Articles
<i>Law on Prevention of Corruption and Conflict of Interest</i>		47, 48
<b>9. Special sectorial legal framework on post-employment restrictions (pantouflage)</b>		
Laws	By-laws	Articles
<b>10. General legal framework on whistle-blower's protection</b>		
Laws	By-laws	Articles
<i>Law on Public Sector Employees</i>		30, 35
<i>Law on Prevention of Corruption and Conflict of Interest</i>		43
<i>Law on Protection of Whistle-blowers</i>		
	<i>Rulebook on protected internal reporting in institutions from the public sector</i>	
<b>10. Special sectorial legal framework on whistle-blower's protection</b>		
Laws	By-laws	Articles

11. General legal framework on intolerance of integrity violations		
Laws	By-laws	Articles
Law on Public Sector Employees		40
Law on Administrative Servants		64, 70-80
Rulebook on the process of performance of the disciplinary procedure for disciplinary offences and on the form of secret voting		
Law on Prevention of Corruption and Conflict of Interest		4, 23, 24, 27, 61, 77, 78, 94
11. Special sectorial legal framework on intolerance of integrity violations		
Laws	By-laws	Articles

**STEP 3:** Compare the special provisions on integrity with the general integrity framework. Generally, if the spotted difference institute a more rigorous observance of the integrity requirement in the sector, it should not be a problem. If you spotted differences which institute unjustified derogation from the general integrity framework, which could compromise the integrity climate in the public institutions from the selected sector, then carry out a separate, detailed analysis for each of the spotted problems, using the following matrix:

- 1 -	
<b>Art. __ para. __ let. __) from the general framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Art. __ para. __ let. __) from the special sectorial framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Objections:</b> <i>[text of objection, explaining why the provision qualifies as one/several risk factors and how these may lead to corruption acts]</i>	
<b>Recommendations:</b> <i>[text of concrete recommendation that would overcome the problem described in the objection]</i>	
<b>Regulatory risk factors:</b> • <i>[introduce risk factors from the list in Annex 1]</i>	<b>Corruption risks:</b> • <i>[list corruption acts at risk of occurring]</i>
- 2 -	
<b>Art. __ para. __ let. __) from the general framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Art. __ para. __ let. __) from the special sectorial framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Objections:</b> <i>[text of objection, explaining why the provision qualifies as one/several risk factors and how these may lead to corruption acts]</i>	
<b>Recommendations:</b> <i>[text of concrete recommendation that would overcome the problem described in the objection]</i>	
<b>Regulatory risk factors:</b> • <i>[introduce risk factors from the list in Annex 1]</i>	<b>Corruption risks:</b> • <i>[list corruption acts at risk of occurring]</i>



## PART II. Sectorial legal framework containing corruption risks in the exercise of the mandate of the public institutions from the selected sector

**STEP 4:** List the main functions the public institutions from the selected sector have to carry out to fulfil their public interest mandate.

**STEP 5:** List the provisions from the main laws and by-laws regulating the activity of the public institutions from the selected sector according to each of these functions.

a. Function [indicate]		
Laws	By-laws	Articles

  

b. Function [indicate]		
Laws	By-laws	Articles

**STEP 6:** Identify the problems posed by provisions that might generate corrupt behaviour within the public institutions from the selected sector. For each of these problems carry out a separate, detailed analysis, using the following matrix:

- 1 -	
<b>Art. __ para. __ let. __) from the general framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Art. __ para. __ let. __) from the special sectorial framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Objections:</b> <i>[text of objection, explaining why the provision qualifies as one/several risk factors and how these may lead to corruption acts]</i>	
<b>Recommendations:</b> <i>[text of concrete recommendation that would overcome the problem described in the objection]</i>	
<b>Regulatory risk factors:</b> <ul style="list-style-type: none"> <li><i>[introduce risk factors from the list in Annex 1]</i></li> </ul>	<b>Corruption risks:</b> <ul style="list-style-type: none"> <li><i>[list corruption acts at risk of occurring]</i></li> </ul>
- 2 -	
<b>Art. __ para. __ let. __) from the general framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Art. __ para. __ let. __) from the special sectorial framework</b> <i>[text of the respective article, paragraph, letter etc. that the expert objects]</i>	
<b>Objections:</b> <i>[text of objection, explaining why the provision qualifies as one/several risk factors and how these may lead to corruption acts]</i>	
<b>Recommendations:</b> <i>[text of concrete recommendation that would overcome the problem described in the objection]</i>	
<b>Regulatory risk factors:</b> <ul style="list-style-type: none"> <li><i>[introduce risk factors from the list in Annex 1]</i></li> </ul>	<b>Corruption risks:</b> <ul style="list-style-type: none"> <li><i>[list corruption acts at risk of occurring]</i></li> </ul>

**NOTE:** The list of regulatory risk factors is contained in Annex 1 bellow. The definitions and detailed descriptions of each of these regulatory risk factors is included in Annex 2 bellow.

List of Regulatory corruption risk factors<sup>5</sup>

<b><u>Category I. LEGAL WORDING AND COHERENCE</u></b>	
1.	Use of undefined terms
2.	Irregular use of terms
3.	Unclear, unprecise or ambiguous wording
4.	Faulty reference provisions
5.	Conflicting provisions
6.	Gaps (lacunas)
7.	Unfeasible provisions
<b><u>Category II. TRANSPARENCY AND ACCESS TO INFORMATION</u></b>	
8.	Lacking or insufficient transparency of a public institution
9.	Lacking or insufficient access to information of public interest
<b><u>Category III. COMPETENCES, PROCEDURES, RIGHTS AND OBLIGATIONS</u></b>	
10.	Unspecified subject the provision refers to
11.	Overlapping competences
12.	Improper duties for the status of the public authority/private entity
13.	Unjustified exceptions from the exercise of rights/duties
14.	Setting up a right instead of a duty
15.	Duties set up in a manner that allows abusive interpretations
16.	Non-exhaustive, unspecified or discretionary grounds for decision-taking
17.	Allocating competences enabling conflict of interest
18.	Lack/unclear administrative proceedings
19.	Lack of specific terms / unjustified terms / unjustified extension of terms
20.	Unjustified limitation of human rights
21.	Discriminatory provisions
22.	Stimulating unfair competition
23.	Exaggerated costs for provision's enforcement as compared to the public benefit
24.	Promotion of interests contrary to the public interest
25.	Infringement of interests contrary to the public interest
26.	Excessive requirements for exercising rights/duties
<b><u>Category IV. OVERSIGHT MECHANISMS</u></b>	
27.	Insufficient supervision and control mechanisms (hierarchic, internal, public)
28.	Insufficient mechanisms to challenge decisions and actions of public institutions
<b><u>Category V. LIABILITY AND SANCTIONING</u></b>	
29.	Overlapping legal liability for the same violation
30.	Non-exhaustive grounds for liability to arise
31.	Lack of clear liability for violations
32.	Lack of clear sanctions for violations
33.	Mismatch between the violation and sanction

<sup>5</sup> This list of regulatory corruption risk factors has been previously developed by Cristina Tarna, while working on previous assignments of developing corruption proofing methodologies for other countries. However, this list can be replaced by the list of regulatory corruption risk factors which is part of the corruption proofing methodology adopted by the SCPC.

## Annex 2 to the Steps and matrixes for the identification of regulatory risk factors and corruption risks: Definitions and descriptions of Regulatory corruption risk factors<sup>6</sup>

The corruption risks arising from legislation are due to triggering factors, which are provisions worded in a certain manner or which follow a certain logic. Despite the fact that in most cases these risk factors find themselves in the legal texts absent direct intent of the drafters, nevertheless they preserve the same level of threat to the public interest that the risk factors which are purposefully included in the laws. A detailed description of the factors generating corruption risks by categories is presented below.

### CATEGORY I. Legal Wording and Coherence

#### 1. Use of undefined terms

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*Use of undefined terms* is the use of terms which are not clarified in the legislation, which are not defined/explained directly in the assessed legal text and which do not have a common wide-spread and uniform meaning for the general public.

The danger of this factor derives from the occurrence of different practices of interpretation of these terms, practices which may be abusive, especially when public institutions are expected to apply uniformly rules, the wording of which contains such terms. Nevertheless, private entities may also take illegal advantage to promote their interests (through bribery) when legal texts are using undefined terms.

#### 2. Irregular use of terms

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*Irregular use of terms* represents the use of different terms (use of synonyms) referring to the same phenomenon or the use of the same term referring to different phenomena.

The danger of this risk factor derives from the fact that the application of non-uniformly used terminology may trigger vicious practices of interpreting the meaning of the norm, namely: treating the same phenomenon as different phenomena (because of the confusion created by calling it in different ways) or treating the same phenomenon as distinct phenomena (because of confusing the two terms the legal text is using to reference to the same thing). As a result, abuses may be generated by both public and private sectors' representatives.

#### 3. Unclear, unprecise or ambiguous wording

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*Unclear, unprecise or ambiguous wording* is the formulation from the assessed legal text which has a difficult to understand meaning and thus leaves space for abusive interpretation.

The text of the legal text should comply with the requirements of clarity. The linguistic formulations turn into risk factors to the extent in which provide the possibility to apply a provision in preferred interpretation, depending on the interest of those responsible for implementation and/or control.

#### 4. Faulty reference provisions

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*Faulty reference provisions* are the provisions of the draft which refer in an interpretable,

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<sup>6</sup> *Ibidem*.

unclear and imprecise way to other provisions/legislation.

The identification of such risk factors is possible if such expressions are used: “in line with the legislation in force”, “under the law”, “in the established manner”, “according to the legal regulations/in the area” etc., without referring to a specific act and when this is difficult to be established or cannot be established in general during the evaluation.

The expert should pay special attention to the cases of specialized legal acts, dedicated to a specific area, referring to the “legislation in the area”, “special legislation” etc., especially if it is assumed that the given legal act represents in fact that specific legislation in the area, and it is not foreseeable for any additional narrower and specialized legislation to be adopted in the future.

## 5. Conflicting provisions

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*Conflicting provisions* represent an incompatibility of the legal act's provisions with other provisions from the same legal act, with provisions of other national or international legislation.

The conflict may emerge between provisions of the same legal act (internal conflict of norms) and between the provisions of the legal act and the provisions of other national or international legislation (external conflict). An external conflict of legal norms may appear between the legal acts of the same legal force (between two organic laws), between legal acts of different level (e.g.: between an ordinary law and an organic law), between codified and non-codified legal acts.

In any of the situations, the conflict hinders the accurate enforcement of legal provisions and creates preconditions for subjective or abusive selection of a “convenient” provision, which might be applied according to the private (corruptive) convenience at stake.

## 6. Gaps (lacunas)

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*The legal gaps* are the legislator's omission to regulate aspects of social relations which are already existing or which will be generated by the legal act. The gaps create “legislative vacuum”.

The legal gaps generate uncertainty in the social relations and are dangerous especially if they avoid establishing mechanisms for exercising rights, fulfilling obligations, exercising duties of public officials, regulating important aspects of administrative procedures etc.

In all of these cases, the public authorities / private entities in charge of implementing the legal act may use this gap to commit abuses, such as granting or declining an entitlement, depending on the individual's readiness to pay off such an interpretation of the gap in the legal act.

## 7. Unfeasible provisions

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*Unfeasible provisions* are the provisions, which cannot be enforced, as they contradict the reality.

The unfeasible provisions have the effect of “false promises”. The corruptive danger of this risk factor is the uncertainty in the social relations that unfeasible provisions create, especially if such uncertainty affects the mechanisms of the legal act's enforcement. In such cases, public officials in charge of the respective regulations might be tempted to use of this deficiency to commit abuses.

## II. Transparency and Access to Information

### 8. Lacking or insufficient transparency of a public institution

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*Lacking or insufficient transparency of a public institution* is the shortcoming of the legal act in guaranteeing necessary transparency in the functioning of public institutions.

This risk factor predetermines the future activity of the public institution being is performed in an obscure framework.

Lacking of insufficient transparency in the functioning of public institutions can be spotted when provisions related to:

- ensuring public access to information on the implementation of the legal act –
  - publication of progress and or other mandatory reports –
  - securing transparency of the public institutions using IT resources (web pages, open databases, online forms for the interaction with the public institution etc.) –
- are either missing or underdeveloped.

### 9. Lacking or insufficient access to information of public interest

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*Lacking or insufficient access to information of public interest* is the missing or deficient regulation in the legal act of the possibility for a person to find out or to be informed about data, facts, circumstances of personal or general interest, which, normally, should normally be easily accessible without undertaking of burdensome efforts.

The presence of this risk factor in the legal act affects the mechanisms through which information of public interest is to be delivered to the interested persons. Thus, even though a given piece of information is of interest to the society, its delivery to the public is not secured, as the legal act does not set a clear-cut obligation to this end. Such provisions imply the possibility for the public institutions to maintain the information obscure, without a legitimate cause. The person interested in obtaining the information could explore corruptible methods for accessing the respective information, instead of accessing it in an already provided format by the public institution.

This risk factor is frequently identified jointly with other risk factors, such as ambiguous wording and unclear administrative procedures.

## III. Competences, Procedures, Rights and Obligations

### 10. Unspecified subject the provision refers to

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*Unspecified subject the provision refers to* represents the omission of the legal act to clearly indicate the person, authority or entity meant, while the context is not univocal in this regard.

The danger of this risk factor is posed by the fact that either several possible subjects will claim the provision meant them or no subject will acknowledge responsibility under the provision, thus creating difficulties for individuals and legal entities to exercise their rights and legitimate interests.

Unspecified subject the provision refers to is frequently identified jointly with other risk factors, such as ambiguous wording and unclear administrative procedures.

### 11. Overlapping competences

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*The overlapping competences* are those duties of an [usually public] entity that are similar or identical with the duties of other public authorities / private entities.

Overlapping *competences* generate conflicts of competence between the public authorities / private entities simultaneously empowered with identical duties, either through both authorities/entities claiming they are competent to act under these duties or both authorities/entities declining responsibility for them.

Overlapping *competences* sometimes arise when adoption of certain decisions is entrusted to several public authorities (joint decisions). The risks posed by this factor are amplified when legal provisions double competences of public officials/employees from the same authority/entity or from different authorities/entities, as well when a number of public officials/employees and public authorities / private entities are responsible for the same decision or action.

## **12. Improper duties for the status of the public authority/private entity**

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*Improper duties for the status of the public authority/private entity* are those duties which exceed the competences, are not specific to or contravene the status of the authority/entity empowered with such duties.

Improper duties for the status of the public authority / private entity may generate conflicts of interest, conflicts of competences or conflict of rules in the activity of the authorities/entities empowered with such duties. The corruption risks generated by this risk factor are, on one hand, provision of illicit remuneration (giving bribe) by other persons who pursue the fulfilment of their own interests before the authorities/entities empowered with improper duties, and on the other hand – taking bribe and abuse of office from such authorities/entities.

To identify this risk factor it is necessary to check whether the rules instituting the respective public authority/private entity, its legal status and duties resulting from it are in accordance with the additionally set duties in the scrutinized provisions of the legal act.

Most of the times, this risk factor is identified together with conflicting provisions, overlapping competences, conflicting provisions etc.

## **13. Duties set up in a manner that allows exceptions and abusive interpretations**

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*Duties set up in a manner that allows exceptions and abusive interpretations* are those duties of the public authorities which are formulated in an ambiguous manner, providing the possibility to interpret them differently in different situations, including to interpret them in a preferred version or to derogate from them.

Unclear formulation the duties generate the possibility for the public official to choose the most convenient interpretation of his/her duties, without taking into consideration other legitimate interests and the spirit of the law.

## **14. Setting up a right instead of a duty**

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*Setting up a right instead of a duty* is setting in a discretionary manner (right, power) a certain competence, in situations when the legitimate expectation of citizens/society is for the public authority/official to proceed in an imperative manner (follow an obligation, duty).

Legal provisions containing this risk factor offer discretion to public officials to act as they wish instead of fulfilling the duties they should perform. Such discretions may be used abusively to seek undue reward.

This risk factor is amplified when criteria for establishing in which cases the public agent “is entitled” or “is able” and in what cases he/she is excused not to fulfill his/her competences are missing. This risk factor may be identified together with other factors, such as: non-exhaustive, ambiguous or subjective grounds for decision-taking.

### **15. Unjustified exceptions from the exercise of rights/duties**

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*Unjustified exceptions from the exercise of rights/duties* are provisions introducing exceptions from a given rule, when reasons for the need to introduce such exceptions are unclear or lacking.

Provisions establishing ungrounded derogations from the exercise of rights/duties are like “legislative doors” through which the public official may “exit” avoiding to take care of legitimate expectations and claims of the citizens. This factor generates corruption risks due to unjustified discretion the public authority/official enjoys in deciding whether to apply the derogation, forcing individuals to provide corruptible incentives to the public official to avoid the exception, upon which the duration, manner or even the possibility of exercising the legitimate rights or interest depend.

Frequently, the rules establishing ungrounded derogations appear in combination with faulty reference provisions (e.g.: “with exceptions set via the Regulation of the responsible public authority”).

### **16. Non-exhaustive, unspecified or discretionary grounds for decision-taking**

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*Non-exhaustive, unspecified or discretionary grounds/criteria for decision-taking* is the partial / unclear / discretionary setting of cases in which a public authority/official may take a decision, including to refuse or skip carrying out certain duties.

Usually, the listing of grounds/criteria in these cases is left open, through faulty reference provisions to some vague pieces of legislation, or to grounds determined through an internal administrative act of the public authority.

### **17. Allocating competences enabling conflict of interest**

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*Allocating competences enabling conflict of interest* represents empowering a public authority/official with such competences the exercise of which opens up possibilities for broad discretionary powers and chances of abuse (for instance: to set rules, to control observance of these rules and to impose sanctions for their violation).

This risk factor generates the possibility for the public official to seek bribes, for instance, in order to avoid control and/or sanctioning for violating the rules set by the public authority he/she works for, and which therefore would not oppose.

### **18. Lacking/unclear administrative procedures**

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*Lacking/unclear administrative procedures* is the inadequate or confusing regulation of the mechanisms applied in the activity of public authorities.

When the administrative procedures are regulated insufficiently or ambiguously, the dangerous discretion of a public official appears in relation to his/her responsibility to improvise procedural rules convenient to him/her and contrary to the public interest. Lack/ambiguity of the administrative procedures appears when the text of the regulation mentions of even implies that a certain mechanism exists, but:



- does not develop it;
- uses vague reference provisions to unclear legislation establishing such procedures;
- transfers the task for regulating the administrative procedure or a part of it to the public authorities directly responsible to apply it;
- uses ambiguous formulations to describe it;
- sets forth the public agents' discretions regarding different aspects of the procedure, without determining the criteria to be used.

## **19. Lack of specific terms / unjustified terms / unjustified extension of terms**

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*Lack of specific terms / unjustified terms / unjustified extension of terms* is an inadequate regulation of administrative terms. A concrete administrative term is missing when it is not established, not clearly set or stated due to ambiguous or confusing conditions.

Lack of specific terms always leaves space for abusive interpretations by public officials. Their excessive discretion allows them to assess and set in every separate case terms which would be convenient for him/her, for his own actions, as well as for the actions of other legal subjects to whom these terms are applicable.

Setting unjustified terms or unjustified extension of terms is imposing of too long or too short administrative terms, which complicate the fulfillment of rights and interests, both public and private.

Terms are considered to be too long when the actions to be carried out within these terms are very simple and do not need too much time or considerable effort. At the same time, the pursued interest may be of a nature which does not stand long waiting periods for a decision to be taken. When the provisions allow the public institution to act within a too long term, the interested persons will be tempted to buy out taking of the respective measures by the public officials in charge.

The terms are considered to be too short when the actions to be carried out are too complicated or need longer periods of time to be fulfilled than the term that is established. Setting of too short terms for public institutions inevitably leads to their violation and, therefore, frequently to individuals and legal entities – to exploiting the illegal possibilities to harness their legal rights and legitimate interests.

## **20. Unjustified limitation of human rights**

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*Unjustified limitation of human rights* is hindering possibilities to exercise without impediments the individual rights and freedoms prescribed by internal (usually constitutional) and international legislation.

This risk factor entails undermining the guarantees of fulfilling the rights set in the Constitution of the RNM, special laws and international instruments in the area of human rights to which the RNM is a party to, when admissible grounds to limit these rights are absent, meaning that it is not a measure which is necessary in a democratic society for national security, public safety, economic wellbeing of the country, protection of order and prevention of crimes, protection of health and morals, or protection of others' rights and freedoms.

Most of the times, this risk factor is identified together with other risk factors, such as conflicting provisions, excessive requirements for exercising rights/duties and infringement of interests contrary to the public interest.

## **21. Discriminatory provisions**

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*The discriminatory provisions* are those provisions which create a certain situation in the advantage or disadvantage of a subject or a category of subjects, based on criteria of sex, age, type of ownership, and other criteria.

The provisions will be considered discriminatory in two cases. First is when similar advantages are not created to other individuals or legal entities, with comparable merits. Second is when the subjects whose situation is worsened by the legal act, who have similar characteristics with those of other individuals or legal entities, are approached by the legal act differently.

Frequent examples may be found in legal acts establishing fiscal amnesties. The danger of this factor is that the legal acts affected by it will most probably generate feelings of injustice in the society and will plant doubts in relation to politicians' credibility and impartiality.

## **22. Stimulating unfair competition**

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*Stimulating unfair competition* is setting rules undermining equal possibilities for businesses to be active on the market, in favor of one business operator or a small group of businesses.

The danger of this factor lies in the creation chances for abuses of dominant position of the market, of monopolies, anti-competitive agreements and ultimately – for increasing the costs incurred by the citizens – final consumers of goods and services. The corruption risks which may be generated by this risk factor are bribery and favoritism of decision-makers from the public or private sectors to provide access/create conditions for being active on the respective market. Moreover, situations of conflicts of interest and illegal lobbying could be an issue around writing and moving the legal act from draft to proposal in the Parliament.

This risk factor frequently identifies together with: promotion of interests contrary to the public interest, infringement of interests contrary to the public interest, exaggerated costs for provision's enforcement as compared to the public benefit, discriminatory provisions and excessive requirements for exercise of rights/duties. etc.

## **23. Exaggerated costs for provisions' enforcement as compared to the public benefit**

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*Exaggerated costs for provisions' enforcement as compared to the public benefit* are the financial and material costs incurred from public or private sources of funds, necessary to implement the provisions, the amount of which is higher as compared to the advantages obtained by the society or specific individuals/entities as a result of the provision's enforcement.

The danger of this risk factor lies in wasting the public means or the means of the private subjects for building benefits, advantages and interests of reduced value. When the exaggerated costs are incurred by the private subjects, they are tempted to overcome the legal requirements, using "cheaper" corruption methods. On the other hand, whenever these costs are to be incurred from public money, the public authorities empowered to implement the legal act may commit abuses or may end up in a situation when the application of the respective legal act is claimed to be impossible because of lack of resources.

## **24. Promotion of interests contrary to the public interest**

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*Promotion of interests contrary to the public interest* is advancing private interests (personal or group ones), in a manner that is detrimental to the general interest of the society, recognized by the state for the purpose of ensuring its wellbeing and development.

This risk factor derives from the fact that once the legal act adopted, the achievement of certain private interests will be legalized, even though they would harm legitimate interests of other. Such legal acts are abusively favoring individuals and legal entities in obtaining benefits, due to subjective reasons (illegal lobbying, kinship, friendship links or other affinity with the author of the legal act).

This risk factor is frequently a way to discriminate all the other legal subjects found in a similar legal situation, but who cannot benefit from the positive effects of the legal act, which serve the interests of the favored person or group (e.g.: legal provisions institute exceptions from the general law, such as exemption from fees or taxes of certain businesses; passing legal acts intended to forgive debts or to remove from exclusive state property an asset in the interest of a given legal entity).

## **25. Infringement of interests contrary to the public interest**

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*Infringement of interests contrary to the public interest* is the infringement of legitimate private interest (individual or group ones), to the detriment of the general interest of the society, aimed at ensuring its wellbeing and development.

The danger of this risk factor lies in the legalization of the permanent or temporary damages of the legitimate interests of certain individuals or groups, while the given sacrifice does not contribute to fulfilling an objective of general and common interest.

Most of the times, this risk factor is identified together with the promotion of interests contrary to the public interest, excessive requirements for exercising rights/duties or unjustified limitation of human rights.

## **26. Excessive requirements for exercising rights/duties**

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*Excessive requirements for exercising rights/duties* are the exaggerated requirements set in the regulations in relation to the persons/entities exercising their rights and/or fulfilling their duties within an administrative procedure and/or before a public authority body.

The corruption risk generated by this factor occurs when the person/entity finds it too difficult to follow the set requirements and is tempted to use corruption to secure the exercise of its rights and/or fulfillment of its duties.

The excessive nature of the requirements set for exercising the rights/fulfilling the duties occurs when there are too many requirements, which are complicated or difficult to be fulfilled as compared to the nature of the right/duty to be exercised/fulfilled, or when the burden of these requirements is exaggerated as compared to the public authority's/official's required actions to consider (such as, establishment of too high fees, or when the incurred costs for the public authority's consideration are minimum).

The requirements are considered to be excessive also when the list thereof is not exhaustive and leaves to the public official's discretion the establishment of additional requirements to allow the specific individual/legal entity to exercise the rights / to fulfill the duties.

## **IV. Oversight Mechanisms**

### **27. Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)**

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*Lack/insufficiency of supervision and control mechanisms (hierarchical, internal, public)* is the

inefficiency of regulations regarding the oversight and control of public authority's activity in vulnerable areas (exposed to corruption risks) of public official's activities, representing areas of high interest for citizens.

When assessing the control mechanisms, the provisions regarding the internal control and hierarchic control are reviewed, as well as the provisions on public reporting of progress/activity. Attention should be also given to procedures of ensuring public control in the public institution's area of activity.

This risk factor frequently identifies in regulations which:

- lack clear procedure to control the implementation of the legal act's provisions;
- lack or prescribe inadequate restrictions and/or interdictions on the public official to perform activities related to property and/or financial relations;
- lack parliamentary, judicial and administrative control in a certain area;
- lack provisions on public control, on possibilities to file petitions and claims, directly or through civil society organizations, etc.

## **28. Lack/insufficiency of mechanisms to challenge decisions and actions of public institutions**

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*Lack/insufficiency of mechanisms to challenge decisions and actions of public institutions* is omission or inadequate nature of internal or judicial procedures to contest the decisions and actions of public institutions, as well as of their representatives.

The danger of this risk factor comes from absolute and incontestable discretion of the public institution to treat a certain problem of private or public interest, without providing the interested persons the possibility to exercise any form of adequate control over the actions of the public institution.

This risk factor may be identified together with other factors, such as conflicting provisions and legal gaps, lack/ambiguity of administrative procedures, lack/insufficiency of transparency in the functioning of a public institution, lack/insufficiency of access to information of public interest and unjustified limitation of human rights.

## **V. Liability and Sanctions**

### **29. Confusion/duplication of types of legal liability for the same violation**

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*Confusion/duplication of types of legal liability for the same violation* is setting the liability for violations for which the legislation already established other types of liability or simultaneous establishing several types of liability for the same violation.

Confusion/duplication of types of legal liability for the same violation leads to the appearance of corruption risks posed by wide discretion of the fact-finding and sanctioning body in deciding on holding the subject liable through different types of liability or on holding the subject liable according to all types of established liability at the same time, while the subject who has committed the violation is tempted to resort to corruption in order to influence the respective decisions.

### **30. Non-exhaustive grounds for liability**

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*Non-exhaustive grounds for liability* are the grounds for liability which are formulated ambiguously or the list of which is left open, so as to admit diverse interpretation of the cases

when liability may occur.

The danger of this risk factor implies a too wide discretion of the institution in charge of determining the existence of a specific ground to hold someone liable – a discretion which may be used by it to make the perpetrator understand that it could interpret the ambiguous and/or non-exhaustive provision in his/her interest or in his/her detriment. In these circumstances, the person will look for methods to corrupt the public official for the later to interpret favorably the given provision. Moreover, the unclear ground to holding liable may be used by the perpetrator for solving the problem through a “private arrangement” even without a public official suggesting it.

### **31. Lack of clear liability for violations**

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*Lack of clear liability for violations* is the omission or ambiguity in regulating the liability of the individuals / entities for violating the provisions of the draft.

This drawback makes the provisions on liability to be simply declarative, leading to the impossibility of applying practically these provisions and hence to insufficient accountability.

When responsibility for violations of the legal act's provisions is determined by the use of faulty reference provisions, without specifying at least the area of the legislation the reference is made to, it usually determines the appearance of another risk factor – lack of clear sanctions for violations.

### **32. Lack of clear sanctions for violations**

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*Lack of clear sanctions for violations* is the omission to set sanctions for violation of legal provisions or ambiguity of sanctions for committed violations.

When there is lack of clear sanctions for violations of the legal act's provisions, there appears the risk for perpetrators to acknowledge their impunity, perpetuating the perpetration of violations.

### **33. Mismatch between the violation and sanction**

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*The mismatch between the violation and sanction* represents the establishment of some sanctions which do not match the severity of the damages deriving from the committed violations.

The mismatch between the violation and sanction is manifested either through establishing too mild punishments as related to the severity of the regulated violation or by setting too harsh punishments in case of violations with reduced social danger.

Establishing of sanctions which are too low for the severe violations generate same corruption risks as those which appear in case of lack of clear sanctions for violations and namely the fact that the perpetrators will acknowledge their impunity and will continue abusing the legal provisions.

Establishing sanctions which are too harsh for minor violations leads to injustice in relation to the sanctioned perpetrators, who, once acknowledge the too-harsh punishment to serve, may resort to corruption methods to avoid sanctioning, while the public official acknowledging that the sanction is exaggerated for the respective type of violation, will be easier to be “convinced”, considering that he/she actually does a “good thing”.

