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Higher Education Sector Corruption Proofing of Legislation Guidance with checklists

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Higher Education Sector CPL Guidance with checklists

1. Introduction

Regional Anti-Corruption Initiative (RAI) in partnership with United Nations Office on Drugs and Crime (UNODC) implements a three-year project titled Southeast Europe - Together Against Corruption (SEE-TAC).¹ Project activities, among others, include the development of sector-focused Corruption Proofing of Legislation (CPL) guidelines with checklists and the accompanying tailor-made training exercises for the in-depth capacity building in two common corruption-prone sectors for all targeted jurisdictions.² For the needs of the preparation of the project activities towards the national and regional mapping of the sectors that should be subject of interventions, the following steps were taken by the RAI Secretariat and CPL expert team:

- **Comprehensive Survey** - The first method implemented was a desk-research based on reviewing the most relevant national anti-corruption documents (strategies, action plans, policies, the surveys of the relevant international organizations present in the country and the CSOs involved in anti-corruption). The regional context was explored through the review of the findings and recommendations from the relevant anti-corruption and integrity monitoring mechanisms reports (European Commission, GRECO, UNCAC Review Cycles), and the results from the regional and international corruption perception surveys (Balkan Barometer, TI Corruption Perception Indexes, TI Global Barometer, etc). The second method implemented was the questionnaire which included questions on the corruption-prone zones in targeted jurisdictions to determine the beneficiaries' perspective and feedback necessary for mapping corruption-prone sectors of common interest.
- **Determining main criteria for mapping of common sectors** from the perspective of further project activities in the field of Corruption Risk Assessment (CRA) and CPL in targeted jurisdictions.
- **Organizing bilateral meetings and consultations with representatives of relevant public institutions from targeted jurisdictions.** The main aim of these meetings was to present the RAI Project and to identify sectors that should be subjects of interventions in the field of CRA and CPL in the respective jurisdictions.

Following these steps, at a regional meeting in July 2021, representatives of all targeted jurisdictions and other jurisdictions targeted by the SEE-TAC project agreed that **the Higher Education Sector is one of the corruption-prone sectors of common interest and that this sector will be subject to specific CPL Guidelines with checklists.**³

¹ More details are available at <https://rai-see.org/what-we-do/see-tac/>

² Albania, Bosnia and Herzegovina, Kosovo* (* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence), Montenegro, and North Macedonia. These jurisdictions have been targeted based on the previous phase of the project and expressed interest of the beneficiaries and representatives of RAI Steering Group member countries.

³ <https://rai-see.org/rai-secretariat-organized-regional-meeting-on-mapping-sectors-prone-to-corruption/>

Methodologies of research and structure of Guidance

The primary research method for this activity was desk analysis of legislative and institutional frameworks for the Higher Education Sector in five targeted jurisdictions, including available data on gender equality principle (e.g. all available laws in the field of Higher Education, relevant international and national reports/analyses on corruption risks in regulations in the Higher Education Sector in targeted jurisdictions, and key anti-corruption documents and policies for the Higher Education Sector of targeted jurisdictions).

Also, to obtain additional relevant information related to the regulatory corruption risk factors and implementation of CPL in targeted jurisdiction, the questionnaire was prepared for relevant national institutions and bodies, Higher Education Sector competent institutions and relevant CSOs. Nine representatives of stakeholders from targeted jurisdictions responded to the questionnaire. Their responses and attitudes represented a valuable basis for developing this document and were incorporated into the text.

The main objective of the Guidance is to assist national jurisdictions in identifying and decreasing regulatory corruption risk factors in the Higher Education sector legislation.

The document contains two main components: a) Guidance for CPL in Higher Education Sector, and b) Checklists for regulatory corruption risk factors in the Higher Education Sector legislation. In the first section, the document deals with the purpose of the Guidance; defining the most important terms; international standards in the field of CPL and practice in the field of CPL for the Higher Education Sector; the corruption of the Legislative/Decision making Process, and legislative frameworks of this sector in targeted jurisdictions. The second section represents a detailed overview of identified regulatory corruption risk factors in the Higher Education Sector legislations of targeted jurisdictions, divided into five categories.

2. Guidance for CPL in Higher Education Sector

2.1. Purpose of the Guidance – why it is important to assess corruption risks in regulations in the Higher Education Sector and how using the checklists can reduce these risks?

Among other factors, applying imperfect legislation could increase space for corruption cases in practice. While instituting public functions, defining official powers, duties and responsibilities, regulations could create opportunities for interpreting their intended meaning and generating opportunities for future corruption.⁴ Having that in mind, assessing regulatory corruption risk factors is important tool that aims at closing entry points for potential irregularities in practice based on legislation. Assessing regulatory corruption risk factors is especially important for legislation of corruption-prone sectors.

Corruption in the higher education represents a growing global problem, in both developed and developing countries.⁵ It has significant social and economic consequences because of the crucial role that universities play in societies. Namely, corruption in the Higher Education Sector undermines the integrity and the quality of academic standards and the recognition of degrees and certificates, ultimately undermining students' qualifications and prospects for employment.⁶ It may also open the door for a "brain drain", forcing youth and education professionals to leave an institution or country to improve their working conditions or increase professional development opportunities.⁷

In the South-Eastern Europe region, Higher Education is identified by all targeted jurisdictions as one of the corruption-prone sectors. Also, common corruption-prone processes could be identified for this level of education in most or all targeted jurisdictions in the South-Eastern Europe region (e.g. accreditation of higher education institutions and their programs, quality assurance and control of work of higher education institutions, and financing of high schools and faculties).⁸

Improvement of legislation could not exclusively prevent or solve all problems related to the corruption in the Higher Education Sector. However, that fact and the proclaimed autonomy of higher education institutions cannot be reasons for inadequate regulation of issues that could generate space for future corruption cases. For example, in a scenario where the procedure for accreditation of higher education institutions and their programs is not detailed and based on clear and objective criteria for deciding, more opportunities for future corruption will exist in this field. The other example could be the situation where there are no rules on the management of conflict of interest in the procedures for employment and promotion of teacher staff/employees in higher education institutions.

⁴ <http://www.undp-aciac.org/publications/3-4March2020RegionalWorkshop/Corruption%20proofing%20of%20legislation%20-%20SESSION%205%20OCT.pdf>

⁵ <https://curbingcorruption.com/wp-content/uploads/2021/06/210618-Curbing-Corruption-in-Higher-Education.pdf>

⁶ <https://knowledgehub.transparency.org/guide/topic-guide-on-corruption-in-education/download>

⁷ *Ibid.*

⁸ <https://rai-see.org/rai-secretariat-organized-regional-meeting-on-mapping-sectors-prone-to-corruption/>

Following the importance of assessing corruption risk factors in legislation and securing the adequate legal framework in corruption-prone sectors, this document aims to outline the possible Higher Education-specific corruption risks factors in relevant laws and propose recommendations for decreasing/eliminating identified corruption risk factors. In other words, this document offers an overview of the possible corruption risks factors in the Higher Education Sector legislations, grouped in categories, with recommendations for mitigating these risk factors. The Guidelines are dedicated to all stakeholders that participate in the preparation and adoption of the relevant legislation for the Higher Education Sector from different perspectives – competent ministries, higher education regulatory bodies and institutions, anti-corruption institutions, national assemblies, and civil society organizations. Checklists could be applied for identifying corruption risk factors in existing laws on the Higher Education Sector and proposing or implementing measures for decreasing/eliminating these factors. Also, checklists could be used for avoiding corruption risk factors during the preparation of the new laws relevant for the Higher Education Sector.

2.2. Defining corruption, regulatory corruption risk factors and corruption proofing of legislation

For purposes of this document, **corruption** is used in a broad sense and includes any abuse of an official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another, all forms as targeted by the United Nations Convention Against Corruption: criminal acts (bribery), trading in influence, abuse of function, embezzlement, violating provisions concerning conflict of interest, favoritism and improper party financing.⁹

Corruption in the Higher Education Sector takes various forms, ranging from bribery in the processes of recruitment, admissions, graduation, and acquiring academic degrees, nepotism and patronage in tenured postings, political and corporate undue influence in research, plagiarism and other editorial misconduct in academic journals. Corruption in this sector exists at the systemic (fraud, undue influence, irregularities in accreditations, etc.) and individual (academic misbehaviour, plagiarism, cheating etc.) levels.¹⁰

Corruption proofing of legislation represents a review of the form and content of legal acts (drafted or adopted) in the Higher Education Sector to detect and minimise the regulatory corruption risk factors that these acts could facilitate during their implementation. Also, CPL could improve the quality of the legislative drafting itself. As such, proper implementation of CPL reduces the ambiguities and loopholes that could open room for discretionary interpretation, arbitrariness in applying the laws relevant for the Higher Education Sector and generating opportunities for future corruption.

Corruption proofing is not based on real-life processes and practices in the Higher Education Sector but on the legislation itself. In that sense, the application of corruption proofing leads only to recommendations on how to improve the legal rules of a specific law for the Higher

⁹ T. Hoppe, „Anti-Corruption Assessment of Laws (‘Corruption Proofing’) Comparative Study and Methodology“, https://rai-see.org/php_sets/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

¹⁰ <https://knowledgehub.transparency.org/assets/uploads/topic-guides/Topic-Guide-Corruption-in-Education.pdf>

Education Sector, while non-normative aspects are not present. However, CPL also has to consider what challenges a law will meet in real life and what obstacles for proper implementation of rules could exist in the functioning of the Higher Education Sector and work of the higher education institutions and other competent subjects within this sector.

Finally, CPL further enriches public debate. The public institutions competent for drafting laws should reach out early to citizens. Recommendations concerning the regulatory corruption risk factors provided by the anti-corruption institutions and/or civil society organizations should be considered by public institutions competent for drafting laws for the Higher Education Sector. These institutions should provide complete feedback to the anti-corruption institutions or civil society organizations on the compliance/non-compliance of the recommendations with the explanation. All mentioned could be considered as a prerequisite for a transparent and accountable law/decision-making process.¹¹

Regulatory corruption risk factors are existing or missing features in a draft or enacted law that can contribute to corruption, no matter whether they were intended or not.¹² In accompanied checklists, all concrete identified regulatory corruption risk factors in the Higher Education Sector Legislation are listed and described under the following five categories:

1. Corruption risk factors related to ambiguity;
2. Corruption risk factors related to transparency and access to information of public importance;
3. Corruption risk factors related to competencies, procedures, rights, duties, and interests;
4. Corruption risk factors related to oversight mechanisms;
5. Corruption risk factors related to responsibility and sanctions.

2.3. International standards and practice

None of the existing international conventions or standards directly addresses CPL. Article 5 Para. 3 of the United Nations Convention Against Corruption calls on the Member States to periodically evaluate relevant legal instruments and administrative measures to determine their adequacy to prevent and fight corruption. However, this provision refers only to specific (“relevant”) anti-corruption laws that “prevent and fight corruption”, but not to an evaluation of all regulations for corruption risk factors.¹³

CPL is a discipline that comparatively starts to apply in the early 2000s. By the end of 2020, the CPL became a part of the law-making process in more than 20 countries (Moldova, Lithuania, South Korea, Latvia, the Czech Republic, Ukraine, Russia, etc.). In these countries,

¹¹ https://rai-see.org/php_sets/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

¹² For more details see, T. Hoppe, „Anti-Corruption Assessment of Laws (‘Corruption Proofing’) Comparative Study and Methodology” https://rai-see.org/php_sets/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

¹³ The UNODC’s “Legislative Guide for the Implementation of the United Nations Convention Against Corruption”, 2012, page 24, No. 67, does not point to a different direction than the wording of paragraph 3, https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf

competent institutions have developed a methodology for assessing the regulatory corruption factors. In the South-Eastern European jurisdictions, a significant contribution to the development and further improvement of this anti-corruption mechanism was provided by the Regional Anti-Corruption Initiative - primarily in Albania, Bosnia and Herzegovina, Montenegro, and North Macedonia.

In November 2014, the RAI, the RCC, the Ministry of State on Local Issues of Albania and the Southeast Leadership for Development and Integrity (SELDI) organized the Regional Conference on Good Governance and Anti-corruption Policy Challenges.¹⁴ The Conference recommended the application of the Methodology on Anti-corruption Risk Assessment of Laws. Also, the Conference adopted ***the 10 Ten Principles of Effective Corruption Proofing as an international standard in this field.***¹⁵

Following these principles:

- Corruption proofing should be possible for all draft laws, enacted laws, and of all sectors. If necessary, the prioritizing should base on detecting the risk factors in the corruption-prone sectors or from areas with corruption incidents.
- Most reviewed categories of regulatory corruption risk factors are 1) ambiguity in language or legal technique, and 2) gaps in prevention, in defining deadlines and procedures, competencies of public institutions, sanctioning regime, etc. An example could be the situation where rules do not provide the deadline for the positions of the acting officials or ambiguous provisions on the conditions for selection and ranking of the candidates for employees in the higher education institutions.
- Corruption proofing should apply at all stages of the legislative process: during the drafting at the ministerial level; the adoption of the draft by the government; a follow-up review during the parliamentary process, and after the adoption and a period of the implementation.
- All entities drafting laws have to comply with legal drafting standards that avoid regulatory corruption risk factors. Similarly, parliamentary committees should take part in reviewing regulatory corruption risk factors. In addition, an anti-corruption body for preventing corruption should be in charge of reviewing the draft and enacted legislation. Citizens should be allowed to review drafted or enacted laws freely and at their discretion.
- The law-making institutions should have the obligation to consider the recommendations made by the anti-corruption body for preventing corruption. The law-making institutions should also provide feedback as to which recommendations they have incorporated and the reasons for not implementing other recommendations. In cases where civil society has submitted an anti-corruption assessment their representatives should be heard in person at public hearings.

¹⁴ <https://rai-see.org/regional-conference-on-good-governance-and-anti-corruption-policy-challenges-november-13-14-2014-tirana-albania/>

¹⁵ https://rai-see.org/php_sets/uploads/2015/05/10_Principles_on_Effective_Corruption_Proofing.pdf

- Data and information on CPL should be available online (the methodology, selection of laws, assessment reports (including those of civil society), feedback on compliance, annual summaries of activities and statistics).
- CPL mechanism requires a solid regulatory framework and interactive, practical training for all state bodies that prepare legislation at all levels.

In most countries that apply CPL, competent anti-corruption bodies published opinions/reports on regulatory corruption risk factors in draft laws relevant for the Higher Education Sector - such as laws on higher education and laws on academic integrity. These documents contain findings and recommendations on how to decrease/eliminate identified regulatory corruption risk factors. Also, analyses on legislative frameworks on the Higher Education Sector in these countries are important sources for developing and implementing other anti-corruption tools, such as corruption risk assessment (integrity plans) for institutions within this sector.

There are several international or national studies on corruption in the higher education sector of different jurisdictions. These studies do not have a focus only on regulatory corruption risk factors in the relevant legislation for the higher education sector. However, they contain some findings on identified problems in regulations and recommendations that could be useful for potential legislative reforms in the Higher Education Sector and mitigating of detected regulatory corruption risk factors.¹⁶

2.4. Corruption of the Legislative/Decision making Process

CPL targets only regulatory corruption risks and does not relate directly to corruption of the legislative process itself, such as bribery of legislators or questionable lobbying practices. However, applying this tool could help in preventing the adoption of “tailor-made/corrupted laws”, where interests of corruptors are prescribed. Generally speaking, indicators for such corrupted legislation can be found in particular in the below stated areas:

I Illegal activities

- violation of lobbying rules by interest groups;
- political finance violations by anybody profiting from a law;
- procedural violations during the legislative process, in particular on transparency

II Legal activities

- suspicious privileges in the law for certain personal interest or interests of the interest groups;
- large (but legal) financial political donations by anybody profiting from a law;

¹⁶ For example, Ararat L. Osipian, Grey Areas in the Higher Education Sector: Legality versus Corruptibility, 2012 BYU Educ. & L.J. 141 (2012), available at: <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1310&context=elj>, OECD Anti-Corruption Network for Eastern Europe and Central Asia, Integrity of Education Systems - A Methodology for Sector Assessment, 2018, <https://www.oecd.org/corruption/acn/OECD-ACN-Integrity-of-Education-Systems-ENG.pdf>

- extraordinary (legal) lobbying activities by interest groups;
- lack of transparency of the legislative process (even if formally within legal limits), such as hiding certain financial aspects of the impact of a draft law;
- ethical challenges (despite compliance with the rules);
- obvious disadvantage to or waste of public funds, such as - the allocation of public property to private owners below market value or - the over-financing of public institutions with a known record of embezzlement or illicit enrichment (as stated in reports by the court of auditors for example).¹⁷

2.5. Legislative frameworks of Higher Education Sector in targeted jurisdictions – General findings

All targeted jurisdictions identified higher education as one of the priority areas for the public interest. Since all targeted jurisdictions declared EU integrations as one of the priorities, their higher education legislations were more or less aligned with EU countries policies in this area. This process required substantial reforms in the Higher Education Sector that lasted for almost two decades and still are ongoing, with relatively different results (*Bolognian process*).

In mentioned period, all targeted jurisdictions adopted new laws and bylaws that govern the higher education sector, conditions and manner of carrying out higher education activities, financing bases of higher education, as well as other issues of importance for the performance of the activities thereof. Legal reforms introduced new institutes and procedures that can be vulnerable to corruption in case of a lack of adequately prescribed anti-corruption mechanisms or their insufficient implementation.

A central role in developing laws and public policies for the higher education sector have ministries of education. Also, in some jurisdictions, national councils for Higher Education are established as bodies responsible for the advancement and development of higher education through analysing the situation and achievements in higher education and making expert proposals to other competent institutions.

The Higher Education Sector in all jurisdictions contains a broad circle of institutions that implement education policies (bodies for accreditation and quality assurance, universities, faculties, scientific institutes, etc.). Also, in all jurisdictions, higher education institutions have a proclaimed high level of autonomy and competence to self-regulate many issues. This fact represents a significant challenge related to uniform prescribing of all relevant rules. Having in mind all mentioned, all jurisdictions established a complex set of legislative and institutional frameworks for the Higher Education Sector.

At the general level, most jurisdictions have solid legislative frameworks of Higher Education. However, there is a lot of space for further improvement - primarily in the field of anti-corruption rules and more detailed regulation of all corruption-prone procedures.

¹⁷ See T. Hoppe, „Anti-Corruption Assessment of Laws (‘Corruption Proofing’) Comparative Study and Methodology“, https://rai-see.org/php_sets/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

All jurisdictions have some provisions in their laws on the higher education related to the gender equality principle. For example, Law on Higher Education of Montenegro prescribes that *higher education shall be available to all persons and may not be directly or indirectly restricted on the basis of (among others) gender, as well as that all terms used in this Law with reference to natural persons in masculine gender shall relate to the same terms in feminine gender.*¹⁸ Law on Higher Education of Bosnia and Herzegovina prescribes that *the higher education shall be based on (among others) respect for human rights and civic freedoms, including ban of all forms of discrimination.* Furthermore, *the statute of each public higher education institution and the core document of each private higher education institution shall also contain the provisions which: protect the personnel and students from discrimination on any basis, such as, among others, sex and sexual orientation.*¹⁹

In targeted jurisdictions, the identified regulatory corruption risk factors are related primarily to ambiguity (e.g. legal provisions may be interpreted differently or insufficient reference to other laws) and inadequate regulation of some significant issues.

According to the responses of most stakeholders to questionnaire, **in targeted jurisdictions the following issues are insufficiently regulated, either in the Law on Higher Education, its by-laws, or in other applicable legislation:**

- Procedure for accreditation of higher education institutions and their programs, based on clear and objectively defined criteria;
- Rules aimed to prevent and resolve conflict of interest of teacher staff/ employees of higher education institutions;
- Procedures on whistleblowing and whistleblower protection that higher education institutions/other competent bodies for the Higher Education Sector should follow.

Also, **improvements could be needed in regulation of the following issues:**

- Procedure for quality assurance and control of work of higher education institutions, based on clear and objectively defined criteria;
- Procedure for selecting/appointing higher education institution/other competent body for the Higher Education Sector management that could guarantee the appointment, based on their merit and achieved results;
- Procedure for selecting teacher staff/employees in higher education institutions that could guarantee the hiring based on their merit;
- Procedure for performance evaluation of higher education institutions management and teaching staff
- Rules aimed to prevent and resolve conflict of interest of higher education institution/other competent body for the Higher Education Sector management
- Status and work of an impartial body competent for overseeing the implementation of conflict of interest rules and checking assets and income

¹⁸ Articles 6 and 9, Law on Higher Education of Montenegro, available at http://akokvo.me/wp-content/uploads/2019/04/Law_on_Higher_Education_Montenegro_20_01_2021.pdf

¹⁹ Articles 4, 25, and 38, Framework Law on Higher Education in Bosnia and Herzegovina, available at <http://www.cip.gov.ba/images/pdf/okvirni/Okvirni.eng.pdf>

- declarations of higher education institutions'/other competent bodies for the Higher Education Sector management;
- Mandatory content and comprehensiveness of the financial reports of higher education institutions/ other competent bodies for the Higher Education Sector.

Regulatory risk factors related to: a) the lack of transparency and access to information of public importance; b) oversight mechanisms, and c) responsibility and sanctions are not so represented according to the responses of stakeholders from the targeted jurisdictions.

In four of five targeted jurisdictions, there are reports/opinions of the anti-corruption institutions in the previous five years that provide some information on corruption risk factors in their legislations in the Higher Education Sector. However, the cooperation among all relevant stakeholders in the field of preparation of relevant legislation for the Higher Education Sector is not at the high level and there is a lot of space for improvement.

In all targeted jurisdictions, cooperation between anti-corruption institutions and competent institutions for the Higher Education Sector in the CPL process in the last five years was assessed by stakeholders as partially adequate. Competent institutions for this sector accepted some of the recommendations submitted by the anti-corruption institutions. However, they did not provide complete feedback on the compliance/non-compliance with the recommendations to the anti-corruption bodies. Also, the cooperation of civil society organizations/professional associations with the anti-corruption institutions and competent institutions for the Higher Education Sector in preparing regulations, including the CPL, was partially adequate. Namely, anti-corruption institutions incorporated in their reports/opinions some of the recommendations that CSOs/professional associations submitted but did not regularly provide feedback on that. Also, competent institutions accepted some of the recommendations that CSOs/professional associations submitted but did not provide complete feedback on that.

2.6. How to apply checklists at the level of national jurisdictions? National authorities and CSOs perspective

Checklists in the text below represent an overview of the possible regulatory corruption risks factors in the Higher Education Sector legislations of targeted jurisdictions, based on responses of their representatives and conducted desk analysis, with recommendations of measures for mitigating these risk factors.

The checklists could be used by all competent institutions, including the higher education institutions, as a reminder during the drafting of new regulations or amendments to the existing. For the appropriate application of the Guidance with checklists by all competent institutions, it is of utmost importance that corruption proofing is part of the legal drafting process in general. Also, civil society organizations active in the anti-corruption in the Higher Education Sector could use checklists. Namely, civil society organizations could: help in the identification of regulatory corruption risk factors based on their specific knowledge in the field; monitor and support the CPL process conducted by relevant authorities; conduct CPL analyses themselves, and advocate for legislative amendments and improvements.

Following the international standards and best comparative practices, checklists for regulatory corruption risk factors in the Higher Education Sector could be applied as a reminder for all stakeholders to avoid regulatory corruption risk factors at all stages of the legislative process: during the drafting at the ministerial level; the adoption of the draft by the government; a follow-up review during the parliamentary process, and after the adoption and a period of the implementation.

3. Checklists

3.1. CHECKLIST FOR REGULATORY CORRUPTION RISK FACTORS RELATED TO AMBIGUITY			
REGULATORY CORRUPTION RISK FACTOR	DESCRIPTION	EXAMPLE/REMARKS	MEASURE/S FOR DECREASING/ELIMINATING REGULATORY CORRUPTION RISK FACTOR
3.1.1. Key terms could be interpreted in different ways	Key terms in draft or enacted laws are formulated that competent institutions could interpret them in different ways.	Key terms for Higher Education Sector - a higher education institution, body competent for quality assurance in higher education, body competent for accreditation of higher education institutions and their programs, or other similar terms that define status and the work of higher education institutions and other competent authorities in the Higher Education - could be interpreted in different ways.	<ul style="list-style-type: none"> ✓ Define and use key terms in the draft/enacted Higher Education Sector Legislation – such as a higher education institution, body competent for quality assurance in higher education, body competent for accreditation of higher education institutions and their programs, or other terms that define status and the work of

			higher education institutions - consistently and uniformly.
3.1.2. Incoherent use of terms	This regulatory corruption risk factor represents using different terms (synonyms) for the same phenomenon. Also, it occurs when the same term describes different phenomena. The application of inconsistent terminology can lead to abuses in interpreting the meaning of the norm.	The situation when draft/enacted Law uses term <i>issuing permit for work</i> also for <i>accreditation of higher education institutions</i> .	<p>✓ If incoherent use of terms is detected, amend relevant provisions in the draft/enacted Higher Education Sector Legislation and secure that all terms (for example, terms such as <i>permit for work</i> or <i>accreditation of higher education institutions</i>) will be used coherently and have only one meaning.</p> <p>*For amending, it is recommendable to use similar examples from legislation that regulates the functioning of other sectors.</p>
3.1.3. Legal provisions may be interpreted in different ways	This regulatory corruption risk factor exists when legal provisions contain vague, imprecise and ambiguous formulations. In other words, formulations in prescribed	The Law prescribes that some of the members of the National Council for Higher Education shall be appointed from the	<p>✓ If it is detected that some provisions in the draft/enacted Higher Education Sector Legislation</p>

	rules are difficult for understanding and thus leave room for corrupt interpretation.	prominent experts, i.e. artists with internationally recognised works or proven contribution to the national culture, whereby abiding by the representation of the educational-scientific, i.e. educational-artistic fields, at the proposal of the ministry in charge of higher education affairs. However, the law does not adequately specify criteria or elements of the criteria for determining who qualifies as a 'prominent expert'.	contain vague, imprecise and ambiguous formulations, amend them and secure uniform interpretation of relevant legal provisions. For the example from the previous column, that will mean to prescribe clear criteria for determining who qualifies as a 'prominent expert'.
3.1.4. Insufficient reference to other laws	This regulatory corruption risk factor exists when provisions refer to other provisions of the same law or other regulations in a vague and imprecise manner. This risk factor can be identified in cases when prescribed rules contain formulations such as: following applicable laws, by law, in the usual way, and following regulations in this area, without reference to any specific	The Law on Higher Education provides for the implementation of rules set out in another law/regulation, but it is not sufficiently clear in which way to implement these provisions regarding the functioning of the high-level education institutions.	✓ If provisions in the draft/enacted Higher Education Sector Legislation refer to other provisions of the same law or other regulations in a vague and imprecise manner (for example, they contain for references formulations such as: <i>following applicable</i>

	regulation or when this regulation is difficult for determining or cannot be determined at all.		<i>laws, by law, in the usual way, and following regulations in this area), amend these provisions and instead of mentioned references, use the following formulation: rules on _____ from the Law that regulates _____.</i>
3.1.5. Conflicting provisions	Situation/s where the conflict among provisions exists either in the law which regulates the work of higher education institutions itself or between the provision of the law in question with other legislation	In July 2007, Bosnia and Herzegovina adopted Framework Law on Higher Education. All lower state levels had a deadline of six months to harmonize their laws on higher education with the Framework Law on Higher Education. However, that was not the case. Also, the Framework Law prescribes that all issues in the field of higher education, which are not subject of this law, will be regulated by laws at the level of the Republic of Srpska and the cantons. This provision resulted in	✓ If this risk factor exists, amend provisions in the draft/enacted Higher Education Sector legislation for which is assessed that could encourage corruptive behaviour, and secure that there are no confronting provisions. For the example from the previous column, it will be necessary to amend laws on higher education of lower state levels with the Framework Law on

		<p>further heterogenization of the higher education area in Bosnia and Herzegovina and making differences in applying Bologna study cycles and academic titles. To this day, Bosnia and Herzegovina did not adopt a unified rulebook on the use of academic titles, and the acquisition of scientific and professional titles, following the Framework Law.</p>	<p>Higher Education and uniform rules on applying Bologna study cycles and using academic titles.</p>
3.1.6. Legal gaps	<p>Legal gaps represent the legislator's failure to regulate some aspects of social relations in the Higher Education Sector that already exist or that the regulation has yet to create. Gaps create a "legislative vacuum". Legal gaps create uncertainty in social relations in the Higher Education Sector and are especially dangerous if they fail to establish mechanisms for exercising rights, fulfilling obligations, performing the duties of officials, regulating</p>	<p>In the Draft Law on Higher Education, the proposer failed to regulate procedure with criteria for proposing and appointing members of management and governing bodies within the higher education system.²⁰</p> <p>The Draft Law on academic integrity failed to regulate procedure with criteria for proposing and appointing members of the Ethics</p>	<p>✓ If this risk factor exists, amend the Higher Education Sector Legislation by precise regulation of all relevant issues. For examples from the previous column, it will be necessary to regulate in detail procedures with criteria for proposing and appointing members of</p>

²⁰ https://www.antikorupcija.me/media/documents/Mi%C5%A1ljenje_na_nacrt_Zakona_o_visokom_obrazovanju.pdf

	important aspects of procedures, etc.	Committee and Ethics Board. ²¹	management and governing bodies within the higher education system, as well as members of the Ethics Committee and Ethics Board.
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3.2. CHECKLIST FOR REGULATORY CORRUPTION RISK FACTORS RELATED TO TRANSPARENCY AND ACCESS TO INFORMATION OF PUBLIC IMPORTANCE			
REGULATORY CORRUPTION RISK FACTOR	DESCRIPTION	EXAMPLE/REMARKS	MEASURE/S FOR DECREASING/ELIMINATING REGULATORY CORRUPTION RISK FACTOR
3.2.1. Lack of or insufficient transparency of the competent institutions for the Higher Education Sector and higher education institutions	This regulatory corruption risk factor represents shortcomings of legislation for the Higher Education sector in connection with guaranteeing the necessary transparency in the functioning of the competent institutions for the Higher Education Sector and higher education institutions. It predetermines the performance of future activities of institutions in	Provisions related to the following issues do not exist or are not sufficiently elaborated: - providing public access to information on the implementation of relevant legislation; - publishing of all relevant procedures and information for the	✓ If this risk factor is detected, amend relevant provisions and secure legal preconditions for transparency in the functioning of all institutions within the Higher Education Sector. It is

²¹ https://www.antikorupcija.me/media/documents/Mi%C5%A1ljenje_na_Predlog_zakona_o_akademsom_integritetu.pdf

	<p>the Higher Education Sector in non-transparent context.</p>	<p>accreditation and work of the higher education institutions (e.g. procedure and criteria for the accreditation of higher education institutions and their programs; procedure and criteria for selecting/appointing higher education institution/other competent body for the Higher Education Sector management);</p> <ul style="list-style-type: none"> -publishing of all mandatory reports and documents institutions; - ensuring transparency of all institutions in the Higher Education Sector through using IT tools. 	<p>necessary to prescribe rules on:</p> <ul style="list-style-type: none"> - providing public access to information on the implementation of relevant legislation by institutions within the Higher Education Sector following international standards and comparative practice; - publishing of all relevant procedures and information for the accreditation and work of the higher education institutions; -publishing of all mandatory reports and documents by all institutions in the Higher Education Sector; - ensuring transparency of all institutions in the Higher Education Sector through using IT tools.
<p>3.2.2. Lack of access or insufficient access to information of public importance</p>	<p>This regulatory corruption risk exists if the legislation does not regulate or insufficiently regulates the possibility for obtaining</p>	<p>Although the information on the work of the Higher Education Sector institution is of public importance, its</p>	<p>✓ If the possibility for obtaining information related to the work of</p>

	<p>information of personal or public interest related to the work of institutions in the Higher Education Sector that would otherwise be required to be easily accessible. It often occurs jointly with other regulatory corruption risk factors, such as unclear formulations and unclear administrative procedures.</p>	<p>communication to the public is not provided, as the regulation does not introduce an obligation in this regard. Such provisions create the possibility for higher education institutions to keep this information a secret without a legitimate reason.</p>	<p>institutions in the Higher Education Sector is not or is not sufficiently regulated, amend the legislation, clearly introduce obligation of the Higher Education Sector institutions to provide to the public information related to their work and prescribe the procedure for this.</p>
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3.3. CHECKLIST FOR REGULATORY CORRUPTION RISK FACTORS RELATED TO COMPETENCIES, PROCEDURES, RIGHTS, DUTIES, AND INTERESTS

REGULATORY CORRUPTION RISK FACTOR	DESCRIPTION	EXAMPLE/REMARKS	MEASURE/S FOR DECREASING/ELIMINATING REGULATORY CORRUPTION RISK FACTOR
3.3.1. Overlapping competencies	This risk factor implies those competencies of the one competent public institution in the Higher Education Sector that are similar or identical to the competencies of other institutions in this sector. This regulatory corruption risk exists when legislation prescribes that institutions in the Higher Education Sector have identical authorizations (either when these institutions claim to be competent for acting in a specific matter or when they declare themselves incompetent).	When deciding is entrusted to several institutions in the Higher Education Sector (joint decisions). This risk factor increases when more officials and public institutions in the Higher Education Sector are responsible for one decision or action.	✓ If different public institutions in the Higher Education Sector have similar or identical competencies, amend relevant provisions and secure a clear division of tasks among institutions. For examples from the previous column, it will mean to prescribe clear dividing of roles of different public institutions in the Higher Education Sector in deciding or acting on concrete issues.

<p>3.3.2. Competences prescribed in a way that enables exceptions and abuses based on interpretation</p>	<p>This corruption risk factor exists if the competencies of institutions in the Higher Education Sector are vaguely formulated. It can create an opportunity for different interpretations of competencies in different situations, including interpreting them in some preferred way or deviating from them. The vague wording of competencies establishes the possibility for an official of the institution in the Higher Education Sector to choose an interpretation of competencies that privately suits him/her best, without caring about public interest and the spirit of the law.</p>	<p>The higher education institution management is authorized to decide on exceptional employment in “urgent” situations. Furthermore, the higher education institution management is free to interpret what is urgent.</p>	<p>✓ If this risk factor exists, amend relevant provisions in the draft/enacted Higher Education Sector legislation to secure that all prescribed competencies of institutions are clear and precise, without the opportunity for a different interpretation. In the example from the previous column, it will mean: a) to delete mentioned provision and forbid exceptional employment in <i>urgent situations</i>, or b) to limit the period for exceptional employment in <i>urgent situations</i>, and introduce a mechanism for</p>
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			external validation of management's decisions, or c) clearly define/prescribe what will be considered as <i>urgent situations</i> for exceptional employment.
3.3.3. Establishing powers instead of duties	This corruption risk factor exists when rules establish in a discretionary way (right, authority) regarding some competencies in situations where the legitimate expectation is that public institutions in the Higher Education Sector/officials must act imperatively (to abide by obligations or duties). Legal provisions containing this risk factor create space for public institutions/officials in the Higher Education Sector to act discretionary instead of fulfilling their duties. This risk factor is of higher intensity when there are no criteria for determining cases in which a public institution/official "has the right" or "can" exercise responsibilities and which are	The Law stipulates that the work permit issued to a higher education institution can be revoked, when during the procedure of external appraisal of quality, i.e. inspection supervision, it has been determined that it does not meet the requirements for the performance, instead of the duty to do so.	✓ If this risk factor exists, amend relevant provisions in the draft/enacted Higher Education Sector Legislation to secure that in all legitimate cases competent public institutions and officials will have a duty to act. In the example from the previous column, it will be necessary to prescribe that the institution is obliged to revoke a work permit issued to a higher education

	<p>exempt from their execution. This risk factor can exist in parallel with others, such as a vague, unclear or discretionary basis for decision making.</p>		<p>institution when it has been determined that it does not meet the requirements for the performance.</p>
<p>3.3.4. Unjustified exceptions to the exercise of powers/competencies</p>	<p>This regulatory risk factor exists when provisions introduce exceptions to the given rule and when the reasons for introducing these exceptions are unclear or non-existent.</p> <p>This factor leads to corruption risk due to unjustified discretionary authority of a public institution/officials in the Higher Education Sector in deciding whether to apply the exception, which can motivate the subjects to corrupt actions.</p>	<p>The Law prescribes that it is possible to take the exam before the regular exam deadline, with the special approval of the Dean of the Faculty.</p>	<p>✓ If the draft/enacted Higher Education Sector legislation introduces without clear reasons exceptions from regular exercising of individual competencies by institutions/officials, amend relevant provisions to secure that there are no unjustified exceptions to the exercise of competencies. In the example from the previous column, it will mean to delete the mentioned provision.</p>

<p>3.3.5. The uncertain, unclear or discretionary basis for decision making</p>	<p>This regulatory corruption risk factor represents partial/unclear/discretionary determination of cases in which a public institution/official in the Higher Education Sector may decide, including refusing to perform or failing to perform concrete official duties.</p>	<p>For the director of the body competent for the accreditation of higher education institutions and their programs could be selected any candidate who fulfils general conditions, but not the best one, as identified in a selection process.</p>	<p>✓ If this risk factor is detected in the draft/enacted Higher Education Sector Legislation, amend relevant provisions to secure that there are no cases of the uncertain, unclear or discretionary basis for decision making. In the example from the previous column, it will be necessary to prescribe as the rule that for the director of the body will be selected the best candidate, as identified in a selection process. Conditions for eventual exemptions from that rule and acting, in that case, must be prescribed.</p>
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<p>3.3.6. Cumulation of competencies that allows for conflict of interest</p>	<p>This regulatory corruption risk exists when legal provisions establish more competencies of public institutions/officials in the Higher Education Sector that increase the likelihood of abuse.</p>	<p>When the public institution in the Higher Education Sector is competent for prescribing bylaws, controlling compliance with these bylaws, and imposing sanctions for their violation.</p>	<p>✓ If this risk factor exists in the draft/enacted Higher Education Sector Legislation, amend relevant provisions to secure that regulations will not create additional space for conflict of interest cases of officials/employees in the sector. In the example from the previous column, it will mean to provide different institutions with competencies for prescribing bylaws, controlling compliance with bylaws, and imposing sanctions for violation.</p>
<p>3.3.7. Insufficiently regulated procedures</p>	<p>This regulatory corruption risk factor represents inadequate or confusing regulation of the mechanisms applied in the actions of competent public institutions in the Higher</p>	<p>It appears when the legislation prescribes or suggests that some mechanisms exist, but: it is not concretized; the task of</p>	<p>✓ If this risk factor exists, amend relevant laws for the Higher Education</p>

	<p>Education Sector. When procedures are insufficiently or unclearly regulated, there is a danger of discretionary authority of the public institution/official in terms of improvisation of procedural rules which are contrary to the public interest.</p>	<p>regulating the procedure is transferred to the public institutions directly in charge of its implementation; vague wording describes it; discretionary authority of officials regarding various aspects is introduced without specifying the criteria for its use.</p> <p>For example, the lack of criteria for proposing and appointing members of management and governing bodies within the sector and broad discretionary powers to the competent institutions to regulate important issues. Also, if the processes of accreditation of higher education institutions and their programs and quality assurance and control of work of these institutions are not sufficiently regulated.</p>	<p>Sector to secure that all procedures will be sufficiently regulated. For examples from the previous column, that will mean to a) prescribe criteria for proposing and appointing members of management and governing bodies within the Higher Education Sector; and b) regulate in detail the processes of accreditation of higher education institutions and their programs and quality assurance and control of work of these institutions.</p>
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<p>3.3.8. Lack of specific deadlines/inappropriate deadlines</p>	<p>Determining inappropriate deadlines represent situations of prescribing too long or too short deadlines in procedures, which complicate the realization of rights and interests. Deadlines are considered too long when the actions to be performed within those deadlines are simple and do not require too much time or significant effort. Deadlines are considered too short when the actions to be performed within those deadlines are too complicated or require a longer period for realization than the deadline determined.</p>	<p>Law does not prescribe clear deadline for accreditation of higher education institutions and programs.</p> <p>The prescribed deadline for application to the position of director of the body competent for the accreditation of higher education institutions and their programs is seven days only.</p> <p>The higher education is free to extend the deadline for implementation of the contract with their service providers by the decision of the Dean.</p>	<p>✓ If this risk factor exists, prescribe adequate deadlines for acting and deciding in all procedures within the Higher Education Sector.</p>
<p>3.3.9. Discriminatory provisions</p>	<p>Provisions that create a particular situation, favourable or unfavourable for a subject or group of subjects, based on sex, age, types of ownership and other criteria. This does not include situations of the so-called affirmative action measures – provisions in favour of national</p>	<p>The Law prescribes that state higher education institutions may set conditions <i>for</i> enrolment of students in MA/PhD programs in a way that discriminate private owned universities.</p>	<p>✓ If the Higher Education Sector legislation contains discriminatory provisions, they must be amended or deleted. For the example from the previous column, it</p>

	<p>minorities. The provisions will be considered discriminatory in two cases. First, in cases where particular natural or legal persons do not create similar advantages under similar conditions. Second, when with the adoption of legislation on Higher Education Sector the situation deteriorated for certain higher education institutions/employees/students although they have similar characteristics as other higher education institutions/employees/students.</p>		<p>will be necessary to amend provisions on conditions for enrolment of students in MA/PhD programs on state higher education institutions and avoid opportunities for discrimination of students that finished basic studies in private owned universities.</p>
<p>3.3.10. Promoting interests that are contrary to the public interest/corruption of the legislative process</p>	<p>Enhancing private interests (personal or group) in a way that is damageable to the interest of society, recognized by the Government for the sake of general prosperity and development. When legislation on Higher Education contains this risk factor, the realization of some private interests is based on legal provisions. Such legislation corrupts individuals and legal entities in a privileged position for subjective reasons (illegal lobbying, friendly</p>	<p>The Ministry drafted amendments to the Law that will prescribe the lower level of requirements and criteria for the accreditation of private higher education institutions. The President of the Working Group for drafting amendments was the State Secretary in the Ministry. Also, he was one of the founders of the private higher education institution that was not</p>	<p>✓ If the draft/enacted Higher Education Sector legislation promotes private interests in a way that is damageable to society, amend it and secure that there are no legal provisions that promote interests contrary to the public interest.</p>

	relations or other connection with the drafter/proposer).	accredited following the current law because it did not meet some of the prescribed requirements. Following drafted amendments, mentioned requirements will not be applicable in the future.	
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3.4. CHECKLIST FOR REGULATORY CORRUPTION RISK FACTORS RELATED TO OVERSIGHT MECHANISMS

REGULATORY CORRUPTION RISK FACTOR	DESCRIPTION	EXAMPLE/REMARKS	MEASURE/S FOR DECREASING/ELIMINATING REGULATORY CORRUPTION RISK FACTOR
3.4.1. Lack/insufficient mechanisms of supervision and control (hierarchical, internal, public)	<p>This regulatory corruption risk factor represents the inefficiency of legislation regarding the supervision and control of the activities of higher education institutions in sensitive areas, especially in those mentioned in the part 2.5. of the Guidance.</p> <p>When assessing supervising and control mechanisms, provisions on internal and hierarchical controls, as well as provisions on public reporting of institutions in the Higher</p>	<p>This risk factor exists if in legislation on the Higher Education Sector:</p> <ul style="list-style-type: none"> • there is no clear procedure for monitoring the implementation; • no external control is envisaged in any area of work of the higher education institutions; • There are no provisions on public scrutiny or the 	<p>✓ If this risk factor exists in the Higher Education Sector legislation, amend it and secure that there are prescribed sufficient mechanisms of supervision and control of the work of higher education institutions. In the example from the</p>

	<p>Education Sector should be subject of analysis.</p>	<p>possibility to submit petitions and lawsuits, etc.</p> <p>According to the Cantonal Law on Higher Education, the Government of Canton forms a commission that issues licenses to higher education institutions. According to cantonal regulations, only diplomas from accredited higher education institutions are valid and acceptable for proving the profession in employment. The law does not prescribe a deadline for issuing accreditation from the day of applying. Having that in mind, there are no clearly defined mechanisms of supervision and control in the accreditation process.</p>	<p>previous column, it will mean to regulate in detail the work of commission and mechanisms of supervision and control in the accreditation process.</p>
<p>3.4.2. Lack of/insufficient mechanisms to challenge decisions and actions of higher education institutions</p>	<p>This regulatory corruption risk factor exists when the following channels for challenging decisions and actions of higher education institutions do not exist or if they are insufficient:</p> <ul style="list-style-type: none"> • <i>Internal complaint mechanism</i> 	<p>Draft/enacted legislation does not prescribe the possibility for challenging decisions of higher education institutions by submitting a complaint to</p>	<p>✓ If this risk factor is detected in the Higher Education Sector legislation, amend it and secure that there are sufficient</p>

	<ul style="list-style-type: none"> • <i>Complaint to the specialized body of the higher education institution</i> • <i>Complaint to the administrative/political body that oversees higher education institutions activities in general.</i> 	the body that oversees their activities in general.	mechanisms to challenge decisions of higher education institutions. In the example from the previous column, it will be necessary to prescribe the possibility for challenging decisions of higher education institutions by submitting a complaint to the body that oversees their activities in general.
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3.5. CHECKLIST FOR REGULATORY CORRUPTION RISK FACTORS RELATED TO RESPONSIBILITY AND SANCTIONS

REGULATORY CORRUPTION RISK FACTOR	DESCRIPTION	EXAMPLE(S)/REMARKS	MEASURE/S FOR DECREASING/ELIMINATING REGULATORY CORRUPTION RISK FACTOR
3.5.1. Incomplete grounds for liability	This regulatory corruption risk factor exists when the ground for liability in the Higher Education Sector is unclear or when the list of these grounds is open. This	The Law provides that a higher education institution has to submit a report within a prescribed deadline. However, the law	✓ If incomplete grounds for liability exist in the Higher Education Sector Legislation, amend it

	<p>situation leads to possible different interpretations of cases where liability may arise. Also, this corruption risk factor exists when grounds for liability in the legislation on the Higher Education Sector are prescribed in a way that does not cover all possible serious wrongdoings.</p>	<p>does not envisage a liability mechanism if a higher education institution fails to submit this report.</p>	<p>and secure that grounds for liability are prescribed precisely. In the example from the previous column, it will be necessary to prescribe the liability for the situation if a higher education institution fails to submit a report.</p>
<p>3.5.2. Lack of clear liability for wrongdoings</p>	<p>This regulatory corruption risk factor represents omission or ambiguity in prescribing liability of natural and legal persons in the Higher Education Sector for violating the legal provisions. This shortcoming makes the liability provisions only declarative, which leads to the impossibility of their practical application and thus to insufficient liability.</p>	<p>The Law doesn't make clear who from higher education institution may be liable.</p> <p>The Law doesn't make clear whether members of the management board of the body competent for accreditation of <i>higher education institutions and programs</i>, may be liable for lack of their action or damageable decisions.</p>	<p>✓ If this risk factor exists in the Higher Education Sector legislation, amend it to secure that clear liability for wrongdoings is prescribed. In the second example from the previous column, it will be necessary to prescribe that members of the body competent for accreditation of higher education institutions and</p>

			programs will be liable for lack of their action or damageable decisions.
3.5.3. Inadequate relationship between wrongdoings and sanctions	<p>This regulatory corruption risk factor consists in prescribing sanctions that do not coincide with the severity of the harmful consequences resulting from the wrongdoings committed. An inadequate relationship between violation and sanction is manifested either through the determination of too lenient punishments concerning the severity of the regulated injury or by prescribing excessive penalties for injuries that pose a less social danger.</p> <p>Anticipating sanctions that are too lenient to serious wrongdoings create the same risks as in the case of unclear sanctions for violations. Predicting sanctions that are too severe for minor wrongdoings is unfair to sanctioned perpetrators, who can resort to corrupt methods to avoid sanction.</p>	There are rules for conflict of interest prevention, but the only sanction in case of violation is “warning”.	<p>✓ If this risk factor exists in the Higher Education Sector legislation, amend it to secure an adequate relationship between wrongdoings and sanctions. In the example from the previous column, it will be necessary to prescribe more severe sanctions for violation of conflict of interest rules than “warning”.</p>

