REGIONAL ANTI-CORRUPTION INITIATIVE

With funding from
Austrian Development Cooperation

Public Enterprises Sector Corruption Proofing of Legislation Guidance with checklists

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May, 2022

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Public Enterprises 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 expert team for CPL:

- **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 Public**

[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.

Enterprise Sector is one of the corruption-prone sectors of common interest and that this sector should be subject to specific CPL Guidelines with checklists.[3]

Methodologies of research and structure of Guidance

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

The document contains two main components: a) Guidance for CPL in Public Enterprises Sector, and b) Checklists for regulatory corruption risk factors in the Public Enterprises 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 Public Enterprises 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 Public Enterprises Sector legislations of targeted jurisdictions, divided into five categories.

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

2. Guidance for CPL in Public Enterprises Sector

2.1. Purpose of the Guidance – why it is important to assess corruption risks in regulations in the Public Enterprises 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, and 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.

For this document, **"public enterprises"** will include various types of business entities (organisations), that cumulatively meet three criteria: 1) they have to be either fully or partly owned by the state (or various sub-state level authorities), either directly or indirectly (e.g. owned by another state-owned company); 2) they have to be directly or indirectly controlled by the state or specific public authority (e.g. appointment of managers, approval of plans); 3) they have to perform some activity of public interest (which includes state-owned enterprises that operate on the market and fully on profit basis).

Corruption in the public enterprises represents a common problem, especially for developing countries. State-owned enterprises (SOEs) and public enterprises as their subspecies play a significant role in the global economy and provide important goods and services in sectors such as electricity, transportation and telecommunications. SOEs account for approximately ten per cent of the world's GDP (Peng and others, 2016); more than 50 per cent of the gross national product of emerging economies (Armstrong, 2015); and for about one-fifth of world market capitalization (Milhaupt and Pargendler, 2017)[5]. In 2014, the OECD reported that 81 per cent (by value) of the foreign bribery cases investigated between 1999 and 2013 were promised, offered or given to SOE officials (OECD, 2014). SOEs with high-ranking public officials are often at the receiving end of corruption schemes. Historically, SOEs have been very much intertwined in political processes, acting as black boxes for political financing of incumbent governments. SOEs face particular corruption risks owing to their proximity to the government, their prevalence in corruption-prone sectors, and weak corporate governance practices.[6]

In the South-Eastern Europe region, Public Enterprises are identified by almost all targeted jurisdictions as one of the corruption-prone sectors[7] **.** Corruption-prone processes that could be identified vary, depending on specific features of each jurisdictions' legal system, but with many common elements.

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[4] http://www.undp-aciac.org/publications/3-4March2020RegionalWorkshop/Corruption%20proofing%20of%20legislation%20-%20SESSION%205%20CT.pdf

[5] https://www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/corruption-in-state-owned-enterprises.html

[6] Ibid.

[7] https://rai-see.org/rai-secretariat-organized-regional-meeting-on-mapping-sectors-prone-to-corruption/

Adoption of new legislation or amendments to existing laws could not exclusively prevent or solve all problems related to the corruption in the public enterprises. However, such "normative pessimism" could not justify lack of efforts to improve legislation, both in order to fill identified gaps and to remove identified corruption risk factors raising from existing norms.

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 Public Enterprises-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 Public Enterprises Sector legislations, grouped in categories, with recommendations for mitigating these risk factors. The Guidelines are dedicated to all stakeholders that participate in the preparation, adoption and implementation of the relevant legislation for the Public Enterprises Sector from different perspectives – competent ministries, specialized anti-corruption institutions, national assemblies, business associations, civil society organizations, and public enterprises. Checklists could be applied for identifying corruption risk factors in existing laws that are relevant for public enterprises 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 work of public enterprises. While based on problems identified in targeted jurisdictions, this document could be applied also wider – in other jurisdictions – to detect and mitigate regulatory corruption risks in the Public Enterprises Sector legislations.

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, favouritism, post-employment restrictions and improper party financing.[8]

Corruption in the Public Enterprises Sector takes various forms, ranging from bribery in contracting, service providing and recruitment of staff, nepotism and patronage in tenured postings and more than anything, presence of strong political influence on public enterprises' operations that distorts achievement of basic functions and fulfilment of public interest. Corruption in this sector exists both at the systemic (e.g. appointments based on political party preferences rather than on merit, absence of strict separation of roles between the state as an owner and the management of the SOE and its full operational autonomy; absence of clear distinction between the state's role as an owner and its other roles - e.g. regulatory, policy-making and prosecutorial) and individual levels (e.g. bribery, embezzlement).

[8] 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

Corruption risks identified in the work of state-owned enterprises, globally[9] are related to monopolies or preferential treatment they have in the market, gaps in the legal and regulatory frameworks, weak ownership arrangements, politicized boards and management, weak internal controls, compliance and risk management and poor transparency and disclosure practices.

Corruption proofing of legislation represents a review of the form and content of legal acts (drafted or adopted) in the Public Enterprises Sector to detect and minimise the 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 and generating opportunities for future corruption.

Corruption proofing is not based on real-life processes and practices in public enterprises 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 Public Enterprises 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 work of the public enterprises and other competent subjects within the sector.

Finally, CPL further enriches public debate and decrease the ability of the legislative bodies to come up with fast legal solutions especially in cases of passing the laws in accelerated and shorten procedures. According to the EU Progress reports for WB, one of the problems detected was the practice of short and accelerated legislative procedures that prevents the transparency and participatory role of the CSO and of the general public in early detecting the corruption risks in the legislation.[10]

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 Public Enterprises 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] Increased scrutiny will in parallel result in equipping the competent proofing agency and civil society with a sound expertise that will further promote the quality of legal drafting.

[9] https://thedocs.worldbank.org/en/doc/600161611679881440-0090022021/original/StateOwnedEnterprises.pdf

[10] Challenges and Barriers to the European Union Expansion to the Balkan Region, Bruno Ferreira Costa (University of Beira Interior, Portugal), January, 2022

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

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 Public Enterprises 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 2019, 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, 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]

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[12] For more details see, T. Hoppe, „Anti-Corruption Assessment of Laws ('Corruption Proofing') Comparative Study and Methodologyhttps://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

[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

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 management positions or employees in public enterprises.

- 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.

- Law-making institutions should be obliged 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. Also, civil society should be allowed to present their written assessments submitted in a standardized form. In cases where civil society has submitted anti-corruption assessments, their representatives should be heard in person at public hearings. In cases of particular public interest, parliaments should organize expert public hearings before its debate.

- 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 some countries that apply CPL, competent anti-corruption bodies published opinions/reports on regulatory corruption risk factors in draft laws relevant for the Public Enterprises[16]. These documents contain findings and recommendations on how to decrease/eliminate identified regulatory corruption risk factors. Also, analyses on legislative

[16] For Example, opinion of Serbian Agency for Prevention of Corruption (2016) on draft Law on Public Enterprises, available at https://www.acas.rs/wp-content/uploads/2016/02/Misljenje-%D0%BE-Predlogu-zakona-o-javnim-preduzecima-final-.pdf

frameworks in these countries are important sources for developing and implementing other anti-corruption tools, such as corruption risk assessment (integrity plans) for this sector.

There are several international or national studies on corruption in state owned enterprises of different jurisdictions. These studies do not have a focus only on regulatory corruption risk factors in the relevant legislation. However, they contain some findings on identified problems in regulations and recommendations that could be useful for potential legislative reforms in the SEE region as well.[17]

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 "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 individual interests or interests of the group of interconnected individuals;
- large (but legal) financial political donations by anybody profiting from a law;
- 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).[18]

2.5. Legislative frameworks of Public Enterprises Sector in targeted jurisdictions – General findings

Almost all targeted jurisdictions identified public enterprises as one of the priority areas for the public interest. Since all targeted jurisdictions declared EU integrations as one of the

[17] For example, OECD (2018), "**State-Owned Enterprises and Corruption:** What Are the Risks and What Can Be Done?", covering 37 OECD and non-OECD countries, available at: https://www.oecd-ilibrary.org/governance/state-owned-enterprises-and-corruption_9789264303058-en

[18] 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

priorities, their general policies and legislation tend to be mostly aligned with relevant EU policies. However, as the EU itself does not have common legislation when it comes to the public enterprises, in this area county reforms may not fully benefit from the EU oversight and accession negotiation process. The positive influence of the EU could therefore be only indirect and related to the broader public sector and anti-corruption reforms.

The work and operation of public enterprises is regulated mostly through separate pieces of legislation or through both general company law and provisions related to the companies owned by the state. In Albania, state-owned companies are subject to the **Commercial Law, i.e. Law 9901/2008.** Furthermore, exceptionally, the broad field is regulated by different laws in the energy sector, electricity, natural gas, and heat energy, harmonized with the EU directives and regulations.

Special laws for public enterprises exist in Kosovo* (**Law No. 03/L-087 on publicly owned enterprises, Law No. 04/L-111 on Amending and Supplementing the Law No. 03/L-087 on Publicly Owned Enterprises; and Law No. 05/L -009 on Amending and Supplementing the Law No. 03/L-087 on Publicly-Owned Enterprises Amended and Supplemented by the Law No.04/L-111)[19],** Republic of Moldova, (Law on State Enterprises in the Republic of Moldova, LEGE Nr. 146, din 16.06.1994), Montenegro, (**The Law on Public Enterprises**, Official Gazette No. 6/91), North Macedonia (**The Law on Public Enterprises**, Official Gazette No. 38/96, 9/97, 06/02, 40/03, 49/06, 22/07, 83/09, 97/10, 06/12),[20] and Serbia (**The Law on Public Enterprises**, Official Gazette No.15/2016 and 88/2019). In addition to the Law on public enterprises, Montenegro regulates their work through the Law on business entities (Official Gazette No. 65/20) and several specific laws regulating areas of public enterprises' work.

In Bosnia and Herzegovina, there are no public enterprises operating at the central government level. Therefore, work of public enterprises is regulated through three laws, ie. **The Law on Public Enterprises in the Federation of Bosnia and Herzegovina** (Official Gazette of FBiH 8/05, 81/08, 22/09 and 109/12)[21] **Republic of Srpska Law on Public Enterprises** (Official Gazette of Republic of Srpska 75/04), 78/11)[22] and **Law on Public Enterprises of Brčko District of Bosnia and Herzegovina** (Official Gazette of Brčko District BiH 22/2018 – consolidated text and 5/2020)[23].

In all jurisdictions, other relevant legislation for the work and prevention of corruption in public enterprises are also in place, regulating conflict of interest of public officials, free access to information of public importance and public procurements.

All jurisdictions have some provisions in their legislation related to the gender equality principle. However, such provisions are not part of the core public enterprise legislation.

[19] 'Official Gazette', https://gzk.rks-gov.net/
[20] https://www.lexadin.nl/wlg/legis/nofr/eur/arch/mac/LPE.pdf
[21] https://advokat-prnjavorac.com/legislation/Law-on-public-enterprises-in-the-Federation-of-Bosnia-and-Herzegovina.pdf
[22] https://advokat-prnjavorac.com/legislation/Law-on-public-enterprises-of-Republika-Srpska.pdf
[23] https://advokat-prnjavorac.com/legislation/Law-on-public-enterprises-of-Brcko-District-of-Bosnia-and-Herzegovina.pdf

Namely, gender equality is derived from the general prohibition of discrimination (of any kind) in employment in public enterprises and providing services to interested citizens.

In targeted jurisdictions, the identified regulatory corruption risk factors are related primarily to ambiguity and inadequate regulation of some significant issues.

Such ambiguity is recognized by significant number of respondents, even when it comes to key terms, but in particular when it comes to the legal provisions **that may be interpreted in different ways and insufficient reference to other laws**. On the other hand, none of respondents identified legal opinions or guidelines for uniform application of the laws on public enterprises sector adopted by Supreme Court or other relevant institution.

The lack of comprehensive regulation is recognized in almost all jurisdictions when it comes to the **rules aimed to prevent and resolve conflict of interest** of public enterprises management and **ban of financing of political parties and election campaigns, as well as of using resources of public enterprises for political promotion.** Additionally, in most of jurisdictions, the lack of comprehensive regulation is recognized when it comes to the **rules aimed to prevent and resolve conflict of interest of employees of public enterprises.**

Other areas where legal loopholes do exist relate to the issues such are who may decide on establishing, transforming, selling or ceasing public enterprise and other state-owned companies, based on pre-set and clear criteria; procedure on an open competitive procedure for selecting public enterprises management and employees; and liability of public enterprise management in case of poor performance and oversight.

Respondents are not fully informed about the scope of potential problems when it comes to the access to information related to the public enterprises.

Other problems identified by at least half of respondents include **unclear or discretionary decision-making powers of relevant authorities**.

In all targeted jurisdictions, cooperation between anti-corruption institutions and competent institutions for the Public Enterprises 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 Public Enterprises 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 Public Enterprises 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, regulatory and auditing bodies, but also, to certain extent national and local public enterprises. Checklists are primarily 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, checklists could be used by national business associations and civil society organizations active in the field of anti-corruption in general or in the field of work of various sectors where public enterprises operate, which should play an important role in corruption proofing. Namely, business associations and 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 Public Enterprises 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 could be interpreted in different ways.	Key terms (such as public enterprise, an oversight body, founder of public enterprise, activities of public interest or other similar terms that define the area of work of public enterprises) - could be interpreted in different ways.	✓ Define and use key terms in the draft/enacted Public Enterprises Legislation – such as public enterprise, an oversight body, founder of public enterprise, activities of public interest or other similar terms that define the area of work of public enterprises - consistently and uniformly.
3.1.2. Incoherent use of terms	Same term used with different meaning/two or more terms used for the same thing	The situation when draft/enacted Law uses the same term - “committee” both to describe to the government body that	✓ If incoherent use of terms is detected in the draft/enacted Public Enterprises

		conduct recruitment process for the director of public enterprise and task force of the Government that evaluate work of public enterprises.	Legislation, amend relevant provisions and secure that all terms (for example, terms such as *committee* or *commission*) will be used coherently and have only one meaning. *For amending, it is recommendable to use similar examples from legislation that regulates the functioning of other sectors.
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 rules are difficult for understanding and thus leave room for corrupt interpretation.	Situation/s when, for example: a) the Law prescribes that the director of public enterprise must have at least three years of experience in the field of work of the public enterprise, but does not specify whether the experience must be in the dominant area of work (e.g. ensuring postal services) or that related to other working areas of the public	✓ If it is detected that some provisions in the draft/enacted Public Enterprises Legislation contain vague, imprecise and ambiguous formulations, amend them and secure uniform interpretation of relevant legal provisions. For the first example from the previous column that

		enterprise will be acceptable (e.g. advertisement, renting of premises). b) The Law prescribes that public enterprises must submit an annual plan for approval to the Government, but does not make clear whether public enterprises can implement these plans before the decision of the Government or after approval only.	will mean to precise that the director of public enterprise must have at least three years of experience *in the dominant field of work of the public enterprise*.
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 regulation or when this regulation is difficult for determining or cannot be determined at all.	Situation/s where the Law on Public Enterprises provides for the implementation of rules set in another law, but it is not sufficiently clear in which way to implement these provisions on the work of public enterprises.	✓ If provisions in the draft/enacted Public Enterprises 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: *following applicable 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_____*.
3.1.5. Conflicting provisions	Situation/s where the conflict among provisions exists either in the law which regulates the work of public enterprises itself or between the provision of that law and other legislation	The Law on Public Enterprises provides that some documents have to be published on their web pages. However, the other provision prescribes that public enterprises may have their web pages. The mandate of public enterprise director is limited through the Law on Public enterprises provision and may not be extended after expiration even if the new director is not appointed. However, provision of another law (on business registers) provides that the name of enterprises' authorised representative will remain the same in the official	✓ If this risk factor exists in the Public Enterprises Sector legislation, amend provisions for which is assessed that could encourage corruptive behaviour, and in that way secure that there are no confronting provisions. For the first example from previous column, it will be necessary to amend the provision on web pages of public enterprises and prescribe that public enterprises *must* have their web pages.

		register until newly appointed authorised person requests data to be changed.	
3.1.6. Legal gaps	Legal gaps represent the legislator's failure to regulate some aspects of social relations in the Public Enterprises 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 Public Enterprises Sector and are especially dangerous if they fail to establish mechanisms for exercising rights, fulfilling obligations, performing the duties of officials, regulating important aspects of procedures, etc.	In all these cases, the public authorities in charge of enforcing the regulations in the Public Enterprises Sector may use a specific legal loophole to commit abuses, such as recognizing or denying a right, depending on the individual's willingness to pay appropriate interpretation of the legal gap in the regulation. An example may be the situation where the Law on Public Enterprises sets deadlines within which the recruitment of professional directors, based on merit, should be finalized, starting from the day of adoption of the law. However, the Law did not set deadline for the Government to open recruitment procedure.	✓ If this risk factor exists, amend the Public Enterprises Sector Legislation by precise regulation of all relevant issues. For examples from the previous column, it will be necessary to regulate in detail procedure for professional directors based on merit and oversight procedure of work of public enterprises.

		The Law on public enterprises provides that oversight of their work should be organized on the basis of by-law, issued by the minister of economy. However, minister never issued such by-law.	

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 Public Enterprises Sector and public enterprises	This regulatory corruption risk factor represents shortcomings of legislation in connection with guaranteeing the necessary transparency in the functioning of the competent institutions for various sectors of operation of public enterprises and public enterprises. It predetermines the performance of future activities of institutions in non-transparent context.	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 work of public enterprises (e.g.	✓ If this risk factor is detected, amend relevant provisions and secure legal preconditions for transparency in the functioning of public enterprises and all institutions within the Public Enterprises Sector (e.g. regulators, oversight

	.	assessment of work programs and reports on work; procedure and criteria for selecting/appointing of management of public enterprises; procedure and criteria for employment of staff and staff plans; procedure and criteria for public enterprises advertisements and sponsorships; public procurements); - Ensuring transparency of public enterprises through using IT tools websites, open databases, online forms for interaction with consumers, reporting of whistle-blowers etc.).	authorities). It is necessary to prescribe rules on: - providing public access to information on the implementation of relevant legislation by all public enterprises, entities established by public enterprises and all institutions within the Public Enterprise Sector (e.g. regulators, oversight authorities) following international standards and good comparative practice; - pro-active publishing of all relevant procedures and information for the work of public enterprises (e.g. procedure and criteria for selecting/appointing of management of public enterprises; procedure and criteria for employment of staff and staff plans; procedure and criteria for public enterprises advertisements and

			sponsorships; public procurements); -publishing of all mandatory reports and documents by all institutions in the Public Enterprise Sector; - ensuring additional transparency of all institutions in the Public Enterprise Sector through using IT tools (open databases, on-line forms for interaction with consumers, whistle-blowers reporting etc).
3.2.2. Lack of access or insufficient access to information of public importance	This regulatory corruption risk exists if the legislation does not regulate or insufficiently regulates the possibility for obtaining information of personal or general interest related to the work of public enterprises 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.	Although the information on the work of the public enterprises is of public importance, its communication to the public is not provided, as the regulation does not introduce an obligation in this regard. Such provisions create the possibility for public enterprises to keep this information a secret without a legitimate	✓ If the possibility for obtaining information related to the work of public enterprises and other institutions in the Public Enterprises Sector is not or is not sufficiently regulated, amend the legislation, clearly introduce obligation of the public

		reason. Having that in mind, a person interested in obtaining information on the work of public enterprises could use corrupt methods to access them instead of accessing them in an already objectively determined manner.	enterprises and other institutions (regulators, oversight) in the Public Enterprises Sector to provide to the public information related to their work and prescribe the procedure for this.

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 Public Enterprises Sector that are similar or identical to the competencies of other institutions in this sector. This regulatory corruption risk exists when legislation prescribes that	Typical example of this regulatory corruption risk factor is situation where several government ministries/agencies are in charge for the oversight of public enterprises, but it is unclear where the powers	✓ If different public institutions in the Public Enterprises Sector (e.g. regulatory or oversight institutions) have similar or identical competencies,

	institutions have identical authorizations (either when these institutions claim to be competent for acting in a specific matter or when they declare themselves incompetent). It can occur when deciding is entrusted to several institutions in the Public Enterprises Sector (joint decisions). This risk factor increases when more officials and public institutions are responsible for one decision or action.	of one agency stops and another begins.	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 government ministries/agencies when it comes to the oversight of public enterprises. More concretely, line ministries are in charge only for the control of achievement of performance indicators, while the Ministry of Economy is competent for compliance of internal acts of public enterprises with laws.

3.3.2. Competences prescribed in a way that enables exceptions and abuses based on interpretation	This corruption risk factor exists if the competencies of institutions in the Public Enterprises Sector are vaguely formulated. It can create an opportunity for different interpretations of competencies in similar 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 Public Enterprises Sector to choose an interpretation of competencies that privately suits him/her best, without caring about public interest and the spirit of the law.	The director of public enterprise is authorized to decide on exceptional employment in "urgent" situations. Furthermore, the director is free to interpret what is urgent.	✓ If this risk factor exists, amend relevant provisions in the draft/enacted Public Enterprises 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 *urgent situations*, or b) to amend provision and limit the period for exceptional employment in *urgent situations,* and introduce a mechanism for

			external validation of director's decisions, or c) clearly define/prescribe what will be considered as *urgent situations* 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 of citizens/society is that relevant institutions in the Public Enterprises Sector/officials must act imperatively (to abide by obligations or duties). Legal provisions containing this risk factor create space for public institutions/officials 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 exempt from their execution. This	The Law stipulates that the Oversight Board of a public enterprise may discuss the director's responsibility for not fulfilling the plan instead of the duty to do so.	✓ If this risk factor exists, amend relevant provisions in the draft/enacted Public Enterprises 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 Oversight Board of public enterprise is obliged to discuss the director's

	risk factor can exist in parallel with others, such as a vague, unclear or discretionary basis for decision making.		responsibility for not fulfilling the plan.
3.3.4. Unjustified exceptions to the exercise of powers/competencies	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. This factor leads to corruption risk due to unjustified discretionary authority of a public enterprise officials or officials in oversight agencies in deciding whether to apply the exception, which can motivate the subjects to corrupt actions.	Sectoral law provides that public enterprise may not provide services (e.g. water supply or electricity) if there are no all licences and permits for the building in place. However, the same law provides for possibility that such services may be provided on the basis of decision of public enterprises' director, whereas criteria for such decisions are not set.	✓ If the draft/enacted Public Enterprises 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 or to set in advance criteria where temporary

			licences may be granted for justified reasons and legal mechanism for oversight of such decisions.
3.3.5. The uncertain, unclear or discretionary basis for decision making	This regulatory corruption risk factor represents partial/unclear/ discretionary determination of cases in which a public institution/official in the Public Enterprises Sector may decide, including refusing to perform or failing to perform concrete official duties.	Government may choose any candidate for the director of public enterprise who fulfils general conditions, but not the best one, as identified in a selection process.	✓ If this risk factor is detected in the draft/enacted Public Enterprises 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 public enterprise 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.
3.3.6. Cumulation of competencies that allows for conflict of interest	This regulatory corruption risk exists when legal provisions establish more competencies of public institutions/officials in the Public Enterprises Sector that increase the likelihood of abuse.	The Oversight board members are in charge to define criteria for payment of bonuses based on the achievements of the public enterprises, to assess whether criteria are met and to receive remuneration.	✓ If this risk factor exists in the draft/enacted Public Enterprises Sector Legislation, amend relevant provisions to secure that regulation 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 assign another institution with competencies for defining the criteria for payment of bonuses based on the achievement of the public enterprise and assessing fulfilment of these criteria.

3.3.7. Insufficiently regulated procedures	This regulatory corruption risk factor represents inadequate or confusing regulation of the mechanisms applied in the actions of public enterprises and institutions in charge for the oversight of their work. 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.	The absence/insufficiency of procedures appears when the legislation prescribes or suggests that some mechanisms exist, but: • it is not concretized; • Insufficiently specific provisions on referring to unclear laws are used determine these procedures; • the task of regulating the procedure or some part of it is transferred to public enterprises directly in charge of its implementation; • vague wording describes it; • Discretionary authority of officials (either in public enterprises or oversight agencies) regarding various aspects is introduced without specifying the criteria for its use. For example, the by-law issued on the basis of the	✓ If this risk factor exists, amend relevant laws for the Public Enterprises Sector to secure that all procedures will be sufficiently regulated. For examples from the previous column, that will mean to prescribe in more details criteria for evaluation of the candidates when it comes to their previous experience, including a) total "weight" of such criteria in the evaluation process (e.g. 50% of the maximum that candidate may score); b) what previous experience will be treated as relevant for concrete recruitment (e.g. work on managerial

		Law on public enterprises, provides that evaluation committee should rank candidates based on their previous experience, among other, but without any further criteria on how the experience has to be evaluated. As a consequence, evaluation committees assign higher or lower importance to length of candidates' previous work experience, depending on what qualification has their preferred candidate.		positions, work in the specific sector); c) years of previous experience that may bring to the candidate a maximal score within this criteria (e.g. 15 years); d) criteria to assign to the candidate with lower experience lower score within this criteria (e.g. that candidate with ten years of relevant experience will have 2/3 of maximum score).
3.3.8. Lack of specific deadlines/inappropriate deadlines	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	There is no prescribed deadline for approval of the public enterprise plan. The deadline for application to the position of director is seven days only. The public enterprise is free to extend the deadline for implementation of the	✓	If this risk factor exists, prescribe adequate deadlines for acting and deciding in all procedures within the Public Enterprises Sector. For the first example from the previous column, it will be

	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.	contract with their service providers by the decision of the director.		necessary to prescribe a deadline for approving public enterprises' plans. For the second example, it will be necessary to extend the deadline for application for the position of director (e.g. no less than 30 days).
3.3.9. Discriminatory provisions	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 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 Public Enterprises	The law prescribes that public enterprises may set conditions for employment in a way that discriminate candidates who were educated at private universities/schools.	✓	If the Public Enterprises Sector legislation contains discriminatory provisions, they must be amended or deleted. For the example from the previous column, it will be necessary to amend provisions on conditions for employment in public enterprises and prevent the possibilities for discrimination of

	Sector the situation deteriorated for certain public enterprises/employees/service users although they have similar characteristics as other public enterprises/employees/service users.		candidates who finished studies at accredited private universities/schools.
3.3.10. Promoting interests that are contrary to the public interest	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 public enterprises 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 relations or other connection with the drafter/proposer).	The new law introduces possibility for public enterprise to be sold to another company, under conditions specified in the law. The implementation of this law will enable selling of the public enterprise to the private company in the market that has significantly higher interest to purchase former public enterprise than any other, because of high compatibility of their fields of operation.	✓ If the draft/enacted Public Enterprises 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.

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)	This regulatory corruption risk factor represents the inefficiency of legislation regarding the supervision and control of the activities of public enterprises in sensitive areas, especially in those mentioned in the part 2.5. of the Guidance. When assessing supervising and control mechanisms, provisions on internal and hierarchical controls, as well as provisions on public reporting of public enterprises and institutions in charge for their founding and oversight should be subject of analysis.	This risk factor exists if in legislation on the Public Enterprises Sector: • there is no clear procedure for monitoring the implementation; • no external control is envisaged in any area of work of the public enterprises; • There are no provisions on public scrutiny or the possibility to submit petitions and lawsuits, etc.	✓ If this risk factor exists in the Public Enterprises Sector legislation, amend it and secure that there are prescribed sufficient mechanisms of supervision and control of the work of public enterprises. In the example from the previous column, it will mean to a) establish external control mechanisms for all important aspects of public enterprises' work; b) set clear procedure for monitoring of public enterprises work (which body is in charge, a

			mechanism for monitoring, mandatory scope of monitoring, deadline, etc); and c) prescribe appropriate legal remedies for public scrutiny of work of public enterprises.
3.4.2. Lack of/insufficient mechanisms to challenge decisions and actions of public enterprises	This regulatory corruption risk factor exists when the following channels for challenging decisions and actions of public enterprises do not exist or if they are insufficient: • *Internal complaint mechanism* • *Complaint to the specialized body of the enterprises (e.g. oversight board)* • *Complaint to the administrative/political body that oversees public enterprises work and activities in general.*	A citizen or company, interested for services of the public enterprise is denied access to such services, based on alleged lack of capacities (in reality, extortion of bribes). Potential customer has no other possibility to obtain such services, since the public enterprise is monopolist. There is no mechanism in place to challenge public enterprises decision or there is an appeal mechanism, but not the one where the level of capacities of public	✓ If this risk factor is detected in the Public Enterprises Sector legislation, amend it and secure that there are sufficient mechanisms to challenge decisions of public enterprises. In the example from the previous column, it will be necessary to prescribe the possibility for challenging decisions of public enterprises or their failure to obtain services that are demanded from

		enterprise will be thoroughly assessed.	their potential customers based on a legitimate ground.

3.5. CHECKLIST FOR REGULATORY CORRUPTION RISK FACTORS RELATED TO RESPONSIBILITY AND SANCTIONS			
REGULATORY CORRUPTION RISK FACTOR	**DESCRIPTION**	**EXAMPLE/REMARKS**	**MEASURE/S FOR DECREASING/ELIMINATING REGULATORY CORRUPTION RISK FACTOR**
3.5.1. Same wrongdoing may bring different types of liability	This regulatory corruption risk factor consists in determining liability for violations for which other types already exist by law, or simultaneously determining multiple types of liability for the same violation. Confusion/duplication of types of legal liability for the same violation leads to the corruption risk due to the wide discretion of the fact-finding body that imposes sanctions when deciding on the responsibility.	Failure of public enterprise to submit and publish reports is punishable in misdemeanour procedure, but at the same time as an economic offence, and the range of fees in two instances differ significantly. The failure of public enterprise director to submit its assets declaration to the competent anti-corruption	✓ If the same wrongdoing may bring different types of liability in the Public Enterprises Sector Legislation, amend it and precisely prescribe what type of liability will apply for each wrongdoing. In the first example from the previous column, it should be clear whether the failure to

		authority may result in criminal liability, misdemeanour procedure or disciplinary procedure (prison sentence/fee/ warning).	submit and publish reports of public enterprise is punishable as an economic or misdemeanour offence.
3.5.2. Incomplete grounds for liability	This regulatory corruption risk factor exists when the ground for liability in the public enterprises is unclear or when the list of these grounds is open. This 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 public enterprises are prescribed in a way that does not cover all possible serious wrongdoings.	The law provides that a public enterprise has to submit a report within a prescribed deadline. However, the law does not envisage a liability mechanism if a public enterprise fails to submit this report.	✓ If incomplete grounds for liability exist in the Public Enterprises Sector Legislation, amend it 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 public enterprise fails to submit a report.
3.5.3. Lack of clear liability for wrongdoings	This regulatory corruption risk factor represents omission or ambiguity in prescribing liability of natural and legal persons in the public enterprises for violating the	The law doesn't make clear whether only the director may be liable, or also the person authorized by his/her decision.	✓ If this risk factor exists in the Public Enterprise Sector legislation, amend it to secure that clear

	legal provisions. This shortcoming makes the liability provisions only declarative, which leads to the impossibility of their practical application and thus to insufficient liability.	The law doesn't make clear whether members of the oversight board may be liable for lack of their action or damageable decisions.	liability for wrongdoings is prescribed. In the first example from the previous column, the law should make clear whether both director and other authorized person are liable and what is the scope of the other person's liability.
3.5.4. Inadequate relationship between wrongdoings and sanctions	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. Anticipating sanctions that are too lenient to serious wrongdoings	A fine envisaged by the law is between 50 and 500 EUR, even if the damage related to the offence could be one million EUR; There are rules for conflict of interest prevention, but the only sanction in case of violation is "warning".	✓ If this risk factor exists in the Public Enterprises legislation, amend it to secure an adequate relationship between wrongdoings and sanctions. In the first example from the previous column, it will be important to prescribe other types of liability if the significant damage is associated with the wrongdoing of the responsible person in

	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.		the Public Enterprises Sector.