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REGIONAL ANTI-CORRUPTION INITIATIVE

REGIONAL ACTIVITY: DEVELOPMENT OF NATIONAL METHODOLOGIES ON ANTI-CORRUPTION ASSESSMENT OF LAWS

**Draft “Methodology of Anticorruption Legislation Review”  
by the State Commission for Prevention of Corruption (Macedonia)**

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The views expressed in this document are solely those of the author and do not necessarily reflect the views of the Regional Anti-Corruption Initiative or its member States, or of the Austrian Development Cooperation.

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## 1 Summary

The Macedonian State Commission for Prevention of Corruption intends to introduce a **comprehensive** corruption proofing mechanism. To this end, the State Commission has adopted a “Methodology of Anticorruption Legislation Review” and asked the Regional Anti-Corruption Initiative (RAI) for a review.

The Methodology contains a wide range of good practises that will significantly strengthen corruption proofing as a mechanism in Macedonia:

- It covers the widest **scope** of drafted and adopted laws possible, with only narrow exceptions applying;
- It targets draft laws at an opportune **time**, i.e. before the start of public consultations;
- It embraces the “**Ten principles** for effective corruption proofing”;
- In general, it foresees **timelines** and a **compliance** mechanism.

It seems worthwhile reviewing whether the Methodology would benefit regarding the following:

- Reviewing to what extent the Methodology covers **sub-statutory** regulations;
- Obliging legal drafters to **consider** corruption risks when drafting laws and regulations;
- Further detailing procedural issues, in particular:
  - o The standard contents of a corruption proofing **report**;
  - o A standard **timeline** for issuing the assessment reports;
  - o The **dissemination** of the report to different stakeholders;
  - o The obligation by the law-drafting or -adopting body to **consider** recommendations and to provide compliance feedback to the State Commission and to civil society;
  - o Defining online **publicity** on corruption proofing, such as of reports, the monitoring of compliance, etc;
- Including a concrete and detailed structure of **corruption risks**, such as for example foreseen by the Regional Methodology in Part 2, chapters 4 and 5;
- Complementing the Methodology with a **statutory basis** obliging other state bodies to cooperate with the State Commission and with civil society.

## 2 Terms of Reference

In 2014, RAI/RCC developed and published the **Regional Methodology** on Anti-corruption Assessment of Laws (corruption proofing of legislation).<sup>1</sup> Following up on the Regional Methodology, RAI intends to facilitate the introduction or strengthening of anti-corruption assessment of laws in at least three beneficiary countries until end of 2018.

Until now, there has been no corruption proofing mechanism for **all** (draft) laws in Macedonia. The State Commission for Prevention of Corruption is competent to provide opinions on laws “important for corruption prevention” and “for prevention of conflict of interests.” Therefore, the State Commission regularly delivers opinions on selected draft laws. To this end, a Government Guideline obliges state authorities developing relevant draft laws to submit their drafts to the State Commission for review (see Regional Methodology Part 1 no. 2.2.7).

The State Commission intends to enlarge the scope of review into a **comprehensive** corruption proofing mechanism. To this end, the State Commission has drafted a “Methodology of Anticorruption Legislation Review” and asked RAI to review this draft.

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<sup>1</sup> <http://rai-see.org/anti-corruption-assessment-of-laws/>.

### 3 Assessment

#### 3.1 Scope

As a commendable feature, the Methodology aims in principle at **all laws**, whether in the drafting stage, or already adopted. It is not fully clear, whether the review only aims at statutes, or also at sub-statutory law, such as directives or ordinances (on the central or local level). The Regional Methodology states in this context: “It is in fact the bylaws that often define procedures, fees and time limits and which also concretise statutory discretion. Many corruption schemes occur mostly or even only at the local level.” (Part 2 no. 1.2).

One of the exceptions are laws “whose adoption is proposed by urgent procedure” (Methodology no. 3.1.2). This makes sense as there will be not enough time for conducting corruption proofing. However, the Regional Methodology states in this context: “In such cases, a thorough report could always be elaborated and submitted after the adoption of an urgent law. If there are substantial shortcomings then parliament could consider modifying the adopted ‘fast’ version of the law.” (Part 2, no. 1.7). Still, the Methodology would allow for such an ex-post review, as it also covers adopted laws, at the discretion of the State Commission.

##### 1.1.1 Timing

According to the Methodology, corruption proofing will take place before ministries publish draft proposals for public consultation (no. 3.1.4). This is a good time, as the public then has the possibility to consider the State Commission’s recommendations when reviewing the draft law. It also gives the ministries a chance to integrate some of the State Commission’s recommendations before publishing the draft.

The Methodology contains another commendable feature: it foresees that the State Commission participates in the “**working group** for drafting the law in order from the beginning to avoid all risks of possibilities for corruption and conflict of interest”. The Regional Methodology states in this context: “In cases of particular interest, corruption proofing experts should take part in the law drafting working group.” (no. 1.4).

The Methodology might want to extend the obligation of corruption proofing to the **drafters** themselves. The Regional Methodology observes hereto: “The drafters of any law should already take the principles of corruption proofing into account in order to avoid any corruption risk from the very beginning.” (Part 2, no. 1.4).

### 3.2 Further procedure

The following steps of corruption proceeding are partially or indirectly reflected in the flow chart contained in the appendix, and in the “Ten Principles” (no. 3.4). It seems, as if more concrete **guidance** in the text of the Methodology itself would benefit a clearer understanding of all stakeholders of the procedural steps:

- The standard contents of a corruption proofing **report** (Regional Methodology Part 2, no. 1.7);
- A standardised **timeline** for issuing the “assessment reports, for draft laws in particular, so that the legislative process can continue. [...] A maximum time of 15 days should be sufficient in general.” (Regional Methodology Part 2, no. 1.7);
- The **dissemination** of the report to different stakeholders? (Regional Methodology Part 2, no. 1.8);
- **Compliance**: a duty of the law-drafting or -adopting body to consider the recommendations, and a duty to provide compliance feedback to the State Commission, or to an external civil society reviewer (Regional Methodology Part 2, no. 1.9);
- Online **publicity** on corruption proofing, such as reports, compliance feedback, etc. (Regional Methodology Part 2, no. 1.10).

### 3.3 Corruption risks

As yet another positive feature, the Methodology by and large draws from the general elaborations on corruption risks in the Regional Methodology (Part 2, no. 3). The Methodology does not contain a more **concrete list** of corruption risks, if only an exemplary or non-exhaustive one. The Methodology rightly observes that “it is rather difficult to exhaustively list all regulatory risks of corruption because they are so diverse and constantly changing as laws change” (at no. 3.3).

However, all laws or methodologies of other countries contain such a list of varying degree of detail (Regional Methodology, Part 2, page 84, line 7.3.4). The reason is in particular the following: A (rather) comprehensive, structured list of corruption risks **informs** legal drafters about possible points they should consider. The same is true for civil society stakeholders reviewing legislation. Thus, a list of corruption risks would also be a **training** and public **education** measure. Such a structure of risks could also serve as a checklist and structure for staff conducting corruption proofing at the State Commission.

Compiling a list of regulatory corruption risks from scratch can be quite an effort. However, the Regional Methodology already provides such a list and examples. It should be rather easy to **adapt** – if and where necessary – this chapter on corruption risks and include or annex it to the Methodology.

### 3.4 Legal basis

The current “Law on Prevention of Corruption” (Article 49) and the current “Law on Prevention of Conflict of Interest” (Article 21) grant the State Commission the **power** to provide opinions on laws “important for corruption prevention” and “for prevention of conflict of interests.” This might raise the question, whether these provisions are broad enough to cover corruption proofing under the Methodology. However, taken literally, any law might be important for corruption prevention, as the manifold regulatory corruption risks show. In any case, this question can only be answered by the Macedonian authorities.

For corruption proofing to work, other public entities need to cooperate with the State Commission and with civil society. A methodology by the State Commission or an internal decree cannot impose any legal obligations on **other state entities**. This concerns in particular the following aspects:

- a. An obligation of state bodies to **submit** draft laws to the State Commission before publishing the drafts for consultation;
- b. An obligation of **working groups** to include the State Commission into the drafting process for important laws (see above section 3.1);
- c. A duty of legal drafters/proponents, of Government, or of Parliament, to consider corruption risks already at the **drafting** stage and to consider the **recommendations** from corruption proofing;
- d. A duty of legal drafters/proponents, of Government, or of Parliament, to provide **feedback** on compliance with the implementation of the recommendations.

Regarding **point a**: The State Commission intends to provide its findings together with the publication of the draft laws. However, should legal drafters not cooperate voluntarily with the State Commission on this timeline the harm would be somewhat limited if the opinion was provided later on: The State Commission could always profit from the mandatory publication of drafted and adopted laws.

Regarding **point b**: Only a statutory regulation could oblige other state entities to include the state commission into working groups. There remains a question-mark though, to what extent a legal regulation would be feasible or concrete enough. Certainly, legal drafters should have the freedom to explore the general feasibility of a new law at an early stage of drafting without an external body already “sitting at the table”. A possible regulation could oblige the drafting entity to include the State Commission only at a progressed state of drafting. Still, question marks remain: How would one define “progressed”? Would such a provision be enforceable? Could one not easily circumvent such an obligation by not setting up a working group or dissolving it whenever convenient? All in all, it seems as if a legal regulation could be thought of in theory, but could be omitted in practice.

**Point c** is probably the issue most in need of a statutory regulation. Laws on the legislative process usually contain a provision on the contents of documentation accompanying draft laws (impact assessment, gender aspects, budgetary costs, etc.). “Corruption proofing” could be easily added to this list. Furthermore, a legal provision should oblige the legislator to consider feedback provided during public consultations on draft laws. This would include feedback by civil society.

Regarding **point d**: This aspect would not necessarily require statutory regulation. In case the legal drafters do not provide compliance feedback, the State Commission could collect data on the compliance with recommendations itself, by comparing the drafts with adopted versions of the laws. However, the Methodology does not foresee such a back up procedure yet (under 3.1.5).

There might be additional aspects, such as whether the State Commission has the necessary “access to all **background** information concerning a [draft] law” (Regional Methodology Part 2, no. 2.5). It will depend on the interpretation of existing law, whether it would cover already information requests to other state entities in this regard (for example Article 49 Law on Prevention of Corruption: “cooperation with other state bodies”). Article 8 of the Government “Guideline for Cooperation between the State Management Bodies, Public Enterprises, Public Institutions and Other Legal Entities with State Capital and the State Commission for the Prevention of Corruption”<sup>2</sup> might also be relevant in this context.

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<sup>2</sup> Official Gazette No. 81/2004 and 135/2006,  
<http://www.pravda.gov.mk/lbireader/DocumentView.aspx?Type=1&ID=9192>,  
<http://www.pravda.gov.mk/lbireader/DocumentView.aspx?Type=1&ID=11904> (Macedonian).



It is in generally recommendable to regulate the basic aspects of corruption proofing in a **statutory law**: “A statutory provision ensures that all public stakeholders take part in the corruption proofing (including compliance reviews). It is also the appropriate legal level for obliging state bodies to respond to assessments submitted by civil society stakeholders.” (Regional Methodology, Part 2 no. 2.1).

However, there can be situations, where there is not sufficient **political will** for amending the current legislation with provisions on corruption proofing. In such a case, one would need to find a pragmatic alternative to introduce corruption proofing as a unilateral measure by the State Commission and try to achieve as much impact as possible by this. The Methodology seems to aim in this direction: “Based on the Methodology of anti-corruption review of the legislation, SCPC will draft and adopt an internal act that would determine all steps to implement the process.” (no. 3.2). In this case, the Methodology would have to rely on the voluntary cooperation by other state bodies. Therefore, such a measure without statutory basis would usually only seem to be a less effective and less commendable option.

## **Annex: Methodology**

[The following is an English translation provided to RAI by the State Commission:]



**Republic of Macedonia  
STATE COMMISSION  
FOR PREVENTION OF CORRUPTION**

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Number \_\_\_\_\_  
\_\_\_\_\_ year  
Skopje

**METHODOLOGY  
OF ANTICORRUPTION LEGISLATION REVIEW**

### **1. Introduction**

Anti-corruption legislation review (ALR), as an essential preventive anti-corruption mechanism that is applied in many countries, is one of the measures of Priority 1 - Rule of law and justice - Anti-corruption policy and legislation set out in the Action Plan of the Government of the Republic of Macedonia in accordance with the List of urgent reform priorities for the Republic of Macedonia submitted by the European Commission. Also, the introduction of anti-corruption legislation review is an obligation that derives from the Strategy for South Eastern Europe 2020, according to a key measure O.1 under the Anti-corruption dimension.

Adoption and enactment of Methodology for anti-corruption legislation review (hereinafter: Methodology) represents promoting the implementation of the competence of the State Commission for Prevention of Corruption (hereinafter: SCPC) stipulated in the Law on Prevention of Corruption and the Law on Prevention of Conflict of Interests, as competent authority in the area in which it is established, in order to ensure consideration of the form and content of the regulations that are under preparation or have already been adopted and detection and prevention of risks for the possibility of corruption and conflicts of interest which laws in their implementation could lead to.

In view of this legal competence and activity, SCPC, with special engagement, commitment and expertise, delivers its opinion on all draft texts of laws in preparation that are sent to it for an opinion, thus contributing to the professional shaping of legislation in terms of corruption and conflict of interest.

In order to further regulate this responsibility of the SCPC, the Government of the Republic of Macedonia adopted Guidelines for cooperation between the bodies of state administration, public enterprises, public institutions and other legal entities that have

state capital at their disposal and the State Commission for Prevention of Corruption ("Official Gazette of Republic of Macedonia" No. 81/2004 and 135/2006), whereby Article 8 stipulates that within the realization of the cooperation, when the state administration bodies draft their projects or legislative amendments that regulate certain relations, and they have some issues of importance for the prevention of corruption, those projects are to be submitted for consultation to the SCPC.

The proactive attitude of the State Commission for Prevention of Corruption to the need for upgrading the legislation in terms of anti-corruption policy, is recognized in the numerous activities provided by state programs such as anti-corruption strategic documents passed by the State Commission for Prevention of Corruption, which provide for amendments to existing laws and passing new laws. The active participation of the SCPC in preparing new anti-corruption legislation is also manifested in its direct participation in the working groups that are formed in the relevant ministries and public debates on the draft laws. The State Commission for Prevention of Corruption accomplishes this activity even in the initial phase by bringing issues to be processed, and by doing the provisions and decisions relating to the prevention of corruption and conflict of interest, thus contributing to professional shaping of legislation in this area. Data on the number and scope of the laws under which the State Commission for Prevention of Corruption has given an opinion, and its overall operation at the regulatory level, are contained in the annual reports on the work of the State Commission for Prevention of Corruption.

The preparation and adoption of a Methodology for anti-corruption review of prepared draft laws, and also the ability to review and give opinions on laws already passed in order to make assessment in terms of their practical application and the required adjustment, will increase the efficiency of law enforcement and minimize the risks of corruption and conflicts of interest which legislation can lead to. At the same time, the compulsory acquisition of opinion and anti-corruption review by the SCPC of all prepared draft laws and legislative bills, will significantly strengthen and improve its legal authority.

## **2. Objective of the Methodology**

The purpose of this Methodology is to define:

- the process of anti-corruption legislation review and the results of the implementation process;
- organization and management of the process;
- the role and tasks of each of the participants in the process;
- involvement of stakeholders in the process.

## **3. Structure of the Methodology**

The methodology consists of four main parts:

- The process of implementing anti-corruption review of the legislation;
- Framework for implementing anti-corruption review of the legislation;
- Description of "the regulatory risks of corruption";
- Principles of effective anti-corruption review of the legislation.

### **3.1 The process of anti-corruption review of the legislation**

#### *3.1.1 Definition*

Anti-corruption review of the legislation presents an analysis and assessment of the form and content of the regulations that are under preparation or have already been made in terms of their practical implementation, compliance and their improvement in order to detect, prevent and minimize risks to the possibility of corruption and conflicts of interest which laws and their implementation could lead to.

#### *3.1.2 Scope*

The anti-corruption review of the legislation should include as many laws as possible. In this way, it will not only eliminate the risks even in those areas that are not normally considered risky, and may still be vulnerable to corruption, but also will promote good drafting of laws as a general rule. The wide scope of anti-corruption review covers laws that are being drafted or already are in force, enacted in a regular legislative procedure or shortened procedure.

Anti-corruption review will not cover laws whose adoption is proposed by urgent procedure, laws on ratification of international treaties, laws by which terminological harmonization with other laws is carried, the draft budget of the Republic of Macedonia and the Law on Execution of Budget of the Republic of Macedonia.

#### *3.1.3 Selection of priority laws*

The State Commission for Prevention of Corruption, as a central body for the implementation of anti-corruption review of the legislation, in the process will include all draft laws and legislative bills and optionally priority laws that have been already passed.

The Work Program of the SCPC for the current year determines and plans all activities related to the implementation of the anti-corruption review of the legislation, after which the SCPC adopts its Annual plan for implementing anti-corruption review of the legislation and a special Plan and schedule for implementing anti-corruption review of legislation upon submitted draft laws and legislative bills and laws that have already been passed.

The SCPC as responsible for anti-corruption review of the legislation, primarily of the laws under preparation, must be in constant contact with the competent ministries that deliver proposals for enacting laws and prepare draft laws and legislative bills for which the authorized proposer is the Government of the Republic of Macedonia, and also to be informed in time in case of possible initiatives and projects for drafting of new legislation or for amending existing laws by other authorized proposer of laws.

When it comes to laws already adopted, the SCPC, in order to implement the process of anti-corruption review of the legislation, has sole discretion in the selection of priority laws for their urgent consideration. Thus, the SCPC can react to any existing doubt about already adopted laws that by themselves and their application pose a risk for the

possibility of corruption or conflict of interest.

The SCPC will select and prioritize legislation based on common criteria or in individual cases as such. The general criteria relate to the legal areas and sectors that are normally susceptible to corruption; laws containing mechanisms susceptible to corruption (such as providing financial incentives, issuing licenses and permits, collection of fees, taxes), regardless if the said legal area is usually risky for corruption; areas with high levels of perceived or actual corruption under national and international research; areas that have been identified as high risk in the national anti-corruption action plans and strategic documents and have been prioritized for reform. Individual cases relate to information or reports from the media or civil society, and an indication by other competent authorities about the risks of possible corruption and conflict of interests in certain legal provisions or certain legal field; information on the draft law that has been exposed to strong lobbying by interest groups and so on.

To implement anti-corruption reviewing and prioritizing the laws already in force, the SCPC will develop plans for anti-corruption review, which will select and include legislation for consideration in a certain period of time.

#### *3.1.4 Phase of the legislative process for making anti-corruption review of the legislation*

In accordance with the Rules of Procedure of the Government of the Republic of Macedonia, relevant ministries publish proposals for adoption of laws, drafts laws, and legislative bills on their website and in the single electronic register of regulations other than draft laws whose adoption is proposed to be made by an emergency procedure. Moreover, any interested party may submit to the single electronic register of regulations its opinions, comments and suggestions regarding the published proposals for a law, draft laws, and legislative bills within 10 days of publication, after which the competent ministry prepares and publishes a report on received opinions.

In accordance with this Methodology, the competent ministries should submit published proposals for adoption of laws, draft laws and legislative bills before the announcement, for an opinion to the SCPC, or for consideration of their form and content aimed at detecting, preventing and minimizing risks for the possibility of corruption and conflicts of interest which laws and their implementation could lead to.

Any external consideration usually begins when a text of a draft law/legislative bill becomes publicly accessible or is published and obligatorily submitted to the SCPC. This would enable the opinions and recommendations of anti-corruption review to be made in the legislative process at an early stage, when work on certain draft law is still pending.

In cases of special interest when working on legislation concerning corruption and conflict of interest, in accordance with this Methodology, representatives of the SCPC, as experts on anti-corruption review of the legislation, must be involved and participate in the working group for drafting the law in order from the beginning to avoid all risks of possibilities for corruption and conflict of interest.

### *3.1.5 Steps in the process of anti-corruption review of the legislation*

The State Commission for Prevention of Corruption implements in five steps reviewing the form and content of legislation for the purpose of inspection and removal of all the risks that could lead to corruption or conflicts of interest:

- Research and collection of materials
- Identification of regulatory risks of corruption and conflict of interest;
- Formulate opinions with recommendations on how to avoid or mitigate the risks of corruption or conflict of interest;
- Writing report and its forwarding;
- Further monitoring compliance with the recommendations.

All steps of the process of anti-corruption review of the legislation will be contained and covered by the report on conducted anti-corruption review that is prepared and adopted by the SCPC.

The report on the review consists of three parts: key data, analysis, and opinion with recommendations. Key data include a given law and its objectives. This part of the report on anti-corruption review can indicate references to other documents and additional explanations of laws. Moreover, the following can be used as information sources: contents of the draft law/the legislative bill under consideration, additional explanations, other laws related to the draft law under consideration, case law in the given field, various papers and articles reviewing laws on the subject matter, international standards and guidelines on certain areas of law, reports from conducted research on corruption in certain areas, audit reports, articles in the media, surveys, consultations with experts, contacts and discussions with stakeholders that apply such law. The analysis refers to the regulatory risks of corruption, which is mainly structured around two main categories: ambiguity and legal shortcomings. The opinion together with recommendations should offer alternative formulations of the law to show whether and how one can mitigate the risk of corruption or conflict of interest. Opinions and recommendations so provided should be accepted or, if that is not the case, their rejection should be explained in detail.

There should be a standardized schedule for the preparation of reports on anti-corruption review of the legislation, particularly laws that are under preparation and should be adopted and enacted in order to avoid disruption of the legislative process. Furthermore, one should take into due consideration the number of draft laws/legislative bills to be submitted and the sufficient time required by the SCPC to consider the text of the draft law/legislation bill and to offer its expertise on prevention of corruption or conflict of interests. As of the date of receipt of the draft law/legislative bill sent by the relevant ministries, SCPC reviews the text of the proposed law, prepares, and adopts a report on the anti-corruption review so conducted.

The report on the review by the SCPC is sent enclosed with the draft law/legislative bill to the competent ministry, which is obliged to incorporate the opinion together with the recommendations from the anti-corruption review as given in the Report of the SCPC, or to explain those recommendations that are not accepted, in the report on received opinions that the competent ministry has prepared in accordance with the Rules of Procedure of the Government of the Republic of Macedonia. The competent ministry that

prepares the law is obliged to consider the opinion together with the accompanying recommendations. In the event that some of the SCPC recommendations are not accepted, it should be explicitly stated, a brief explanation should be given, and the competent ministry must send a feedback on this to the SCPC.

A time limit, by which the institution drafting the law would need to give feedback, should be set. For the laws already in force, the time limits may be extended, however they need to be specified to allow consideration of the law.

The SCPC publishes the reports on anti-corruption legislation review on its website, unless the report contains information deemed classified in accordance with the regulations relating to classified information.

In addition, by means of an annual summary of all actions taken in order to implement the process of anti-corruption legislation review and by regularly publishing all statistical data, information and documents related to the process, insight and work accountability and opportunity for all stakeholders to get involved in the process are thus enabled.

### **3.2 Framework for implementing anti-corruption review of the legislation**

The process of the anti-corruption legislation review is implemented in accordance with the Law on Prevention of Corruption, the Law on Prevention of Conflict of Interest and Rules of Procedure of the Government of the Republic of Macedonia.

The SCPC is in charge of implementing the process, through special unit that is formed as part of the Secretariat of the SCPC.

Based on the Methodology of anti-corruption review of the legislation, SCPC will draft and adopt an internal act that would determine all steps to implement the process.

The process of anti-corruption review of legislation, including the review of compliance with the recommendations, should involve all stakeholders from the public.

The SCPC will carry out anti-corruption review of the legislation and effectively implement the process, with special expertise and understanding of the implications of legal technique and interpretation. In this process, the SCPC may use external experts to assist in cases of highly specialized laws.

For the implementation of the anti-corruption review of the legislation, certain prerequisites are required in order to achieve the desired effects and results. There must be an established way of uniform drafting of laws, which either should be conducted as part of the general legislative culture, or, there would need to conduct extensive training on writing laws. In addition, it is essential that the process of drafting laws is transparent and participatory. Transparency, stakeholder participation, and mechanisms of public consultation to be aligned with international standards will prevent risks of corruption entering the legislative process, because institutions drafting laws will be aware that civil society and the public in general may, at any time, assume the role of guardian of the laws and their reviser.

### 3.3 Regulatory risks of corruption

#### 3.3.1 Definition and categories

Regulatory risks of corruption arise from existing or non-existing features of the law that may contribute to corruption, whether the risk is provided or not.

"Corruption" includes all forms listed in the United Nations Convention against Corruption (criminal offenses such as bribery, trading in influence, abuse of office, embezzlement, and so on, then violation of the provisions on conflicts of interest, favoritism, and inadequate funding of political parties).

In accordance with the Law on Prevention of Corruption, corruption is defined as "abuse of function, public authorization, official duty, and position to achieve any benefit for himself or another."

Risks find their way in the regulations and can be created through poor legal text or through incomprehensive thinking in context of what the law can further do to prevent corruption.

There are two categories of regulatory risks of corruption: the ambiguity and lack of preventive mechanisms.

Ambiguity can result from poorly formulated and incomprehensible language or incoherent legal technique. In both cases, the lack of clarity leads to imprecision and vagueness of legal provisions allowing the law to be interpreted differently. A given law can be very clear and unambiguous, and still show a lack of preventive mechanisms. The lack of preventive mechanisms provides an opportunity for a breach of regulations with a lower risk of liability due to a complete lack of sanctions or due to proclaimed ineffective and weak sanctions.

In terms of the drafting language, particular attention should be paid to the choice of words and construction of sentences. Legal coherence refers to the logical and proper relationship among various provisions of the same law or among different laws. When the link is not clear, this ambiguity could pose a risk of corruption.

Two or more legal provisions may be in conflict; that is, to oppose one another. Conflicts can arise within a single law (inner conflict) or between different laws (external conflict).

Legal loopholes can occur as initial or that existed at the time of the adoption of the relevant legal norms, which the legislator simply failed to edit, and as additional arising after the adoption of norms, because new relations have occurred that legislator did not foresee.

Ambiguous language or legal technique, on the one hand, and legal loopholes related to the mechanisms of prevention, on the other, are often interrelated.

It is obvious that it is rather difficult to exhaustively list all regulatory risks of corruption because they are so diverse and constantly changing as laws change. However, they are all variations of the same basic forms of risks. The detection of flaws in the systems to prevent corruption is, in fact, the purpose of assessing the general risks of corruption.

Major general risks of corruption arise from a broad discretion in decision-making and lack of accountability and transparency.



Obviously, there is additional and decisive ethical component - none of the above risks will materialize if there is a clear incentive and motivation to act ethically.

### **3.4 Ten principles for effective anti-corruption review of legislation of the Regional Anti-Corruption Initiative**

In the adoption of the Methodology for anti-corruption review of the legislation, the State Commission for Prevention of Corruption has taken into consideration the best practices and experiences from other countries in the region and beyond regarding the implementation of this process, which are contained in the comparative study and methodology "Anticorruption review of laws" as prepared by the Regional Anti-corruption Initiative (RAI). In addition, this document contains ten principles for effective anti-corruption review of the legislation, based on which the SCPC has prepared this methodology and the manner of implementation of the anti-corruption review of the legislation, adapting it to the specifics of the country.

#### **Principle 1 - Scope**

Anti-corruption review of legislation should be possible for all draft laws, enacted laws, laws at all regulatory levels (statutes and bylaws), laws of any regulatory sources (central, regional, local, parliamentary, presidential and executive acts), and from all sectors (administrative, criminal, and private law). It should include additional clarifications that may have a decisive role in the interpretation of the law.

#### **Principle 2 - Prioritization**

Ideally, all laws are subject to revision. Any necessary prioritization should be based on risk, such as legislation for areas prone to corruption, which include transactions prone to corruption, or areas of actual incidents of corruption. All state authorities and entities responsible for the anti-corruption review of legislation have the right to choose the laws they will review.

#### **Principle 3 - Regulatory corruption risks**

In anti-corruption review of legislation two categories of regulatory corruption risks are mainly reviewed: on the one hand, the ambiguity of language or legal technique, and on the other hand, gaps in prevention, such as lack of provided deadlines for procedures. Anti-corruption review of legislation should take place at every stage of the legislative process.

#### **Principle 4 - Timing**

Anti-corruption review of legislation should take place at every stage of the legislative process. This includes preparation at the level of the responsible ministry, of the adoption process in the government, of the parliamentary process and when signing a law so that it may enter into force.

#### **Principle 5 - Responsible body**

In phase of drafting a law, all institutions who are involved in this process, in particular the ministries and other executive bodies must meet the standards for avoiding corruption risks in writing laws. Similarly, parliamentary committees should participate in

the revision of the risks of corruption. In addition, a specialized body for prevention of corruption should be responsible for revising the statutes and bylaws in the draft stage or already adopted. The specialized body should coordinate with other state bodies in order to obtain timely information on the draft laws, and background information on the legislation. There is no need to stress that citizens can review prepared or adopted laws to their discretion; there should be no requirements for qualifications or registration to prevent free participation.

#### Principle 6 - Recommendations

The institutions that make the laws should be obliged to take into account the recommendations of the body responsible for anti-corruption review of legislation. The institutions that make the laws should also give feedback as to which recommendations they have included in the law and the reasons for non-implementation of other recommendations. Representatives of civil society should be heard in person during the public debate if they have previously submitted their anti-corruption assessment.

#### Principle 7 - Compliance

The body responsible for anti-corruption review of legislation should monitor compliance with the recommendations from the anti-corruption review. Ideally, the review report should contain, in addition, a standardized form that will facilitate the institution drafting a law to give feedback.

#### Principle 8 - Online publicity

Online publicity is an essential component in anti-corruption review of legislation and refers to the methodology, selection of laws, assessment reports (including those of civil society), feedback on compliance, annual summaries of activities for anti-corruption review of legislation and statistics.

#### Principle 9 - A broader framework for transparency and integrity

In order to achieve a significant effect, anti-corruption review of legislation requires a solid regulatory framework. This refers to the general good drafting, transparent and participatory enactment of laws, lobbying, political funding, and ethics in the legislative process. It is especially important to design a law in such manner that even its first drafts are made public as early as possible and not only after they have been sent to parliamentary procedure.

#### Principle 10 - Training and raising public awareness

Interactive, practical training for anti-corruption review of legislation is necessary for all state bodies in charge of preparing legislation at all levels. Moreover, the public should be aware of the methodology for anti-corruption review of legislation in order to effectively perform its function as watchdog and to participate in public debates appropriately.

**STATE COMMISSION  
FOR PREVENTION OF  
CORRUPTION  
President,  
Goran Milenkov**

## Appendix: Chart 1

Chart 1. Overview of the process for anti-corruption review of legislation

