Corruption Proofing of Draft Legislation. Moldovan experience

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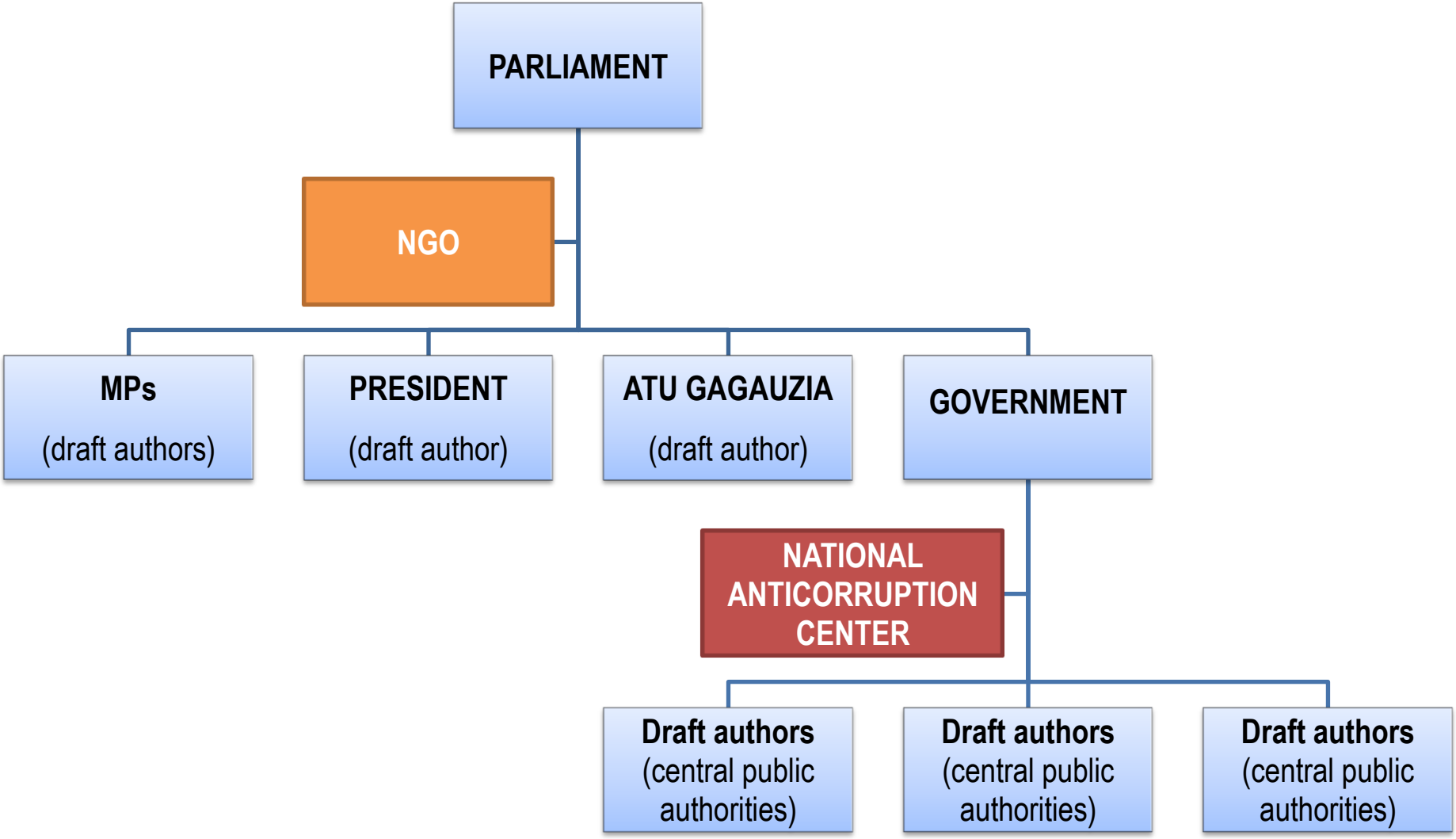
Case of Moldova

- **December 2005** – Concept Paper of Cooperation between the Parliament and the Civil Society
- **June 2006** – NGO launched corruption proofing
- **July 2006** – Gov Decision # 977 passing the Rules of conducting corruption proofing of draft laws and by-laws
- **November 2006** – Law # 332 amending law on legal acts, law on normative acts of Gov, Law on the National Anticorruption Center
- **November 2008** – Law #239 on transparency in the decision-making process


PARLIAMENT
NGO
MPs
(draft authors)
PRESIDENT
(draft author)
ATU GAGAUZIA
(draft author)
GOVERNMENT
NATIONAL ANTICORRUPTION CENTER
Draft authors
(central public authorities)
Draft authors
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Draft authors
(central public authorities)

What is corruption proofing?

- **corruption risk** – possibility resulting from legal provisions of favoring the occurrence of corruption acts in the course of implementation of these provisions;
- **corruption proofing** – process of expert reviewing of the draft laws and of other regulatory acts in the view of identifying the rules which favor or might favor corruption risks;

- **corruption proofing expertise report** – written evaluation prepared by an expert as a result of conducting corruption proofing;

- **expert** – person who possesses theoretical knowledge and practical skills which allow him/her to recognize the corruption risks in a regulatory act text.

What are we particularly looking at as part of corruption proofing?

- ensuring compliance of the draft with other legislation;
- establishment of new public authorities or functions;
- changes proposed to the current regulation of the public authorities' duties;
- justification of the draft's solutions, "hidden goals";
- who will benefit from the draft and how;
- who might be damaged by the draft and how;
- financial coverage of the draft.

Reading the drafts having two questions in mind…

1. Can a public servant interpret abusively this provision?

2. What can a public servant or individual do badly with this provision?

Corruption proofing report

I. General Evaluation

1. Justification of the Draft

    1.1. General justification of the draft
    (a. author, b. category, c. goal, d. sufficiency of reasons)

    1.2. Economic-financial justification of the draft

    1.3. Promotion/damaging of private interests, absent public interest justification

2. Assessing compatibility of the draft with AC standards

    2.1. Compatibility with domestic/international AC standards

    2.2. Observing transparency in the decision making process

II. Substantive evaluation of the draft

1. Ambiguous linguistic wording
2. Conflicts of law
3. Faulty reference provisions
4. Excessive discretions of public authorities
5. Excessive requirements to exercise the rights
6. Limited access to information, lack of transparency
7. Lack or insufficiency of control mechanisms
8. Inappropriate liability and sanctions

Results

- All incoming draft laws and by-laws checked (338 drafts 2.504 pages long screened in 6 months 2014 by NAC, 144 MPs drafts - eluded)
- Improved quality of legal drafting
- Efficiency of NAC (Gov/Parl) – 65-80%
- Efficiency of NGO (Parl) – 45-55%
- Justifications public and more sound
- Transparency of the legal drafting process – considerably improved

Efficiency – 6 months 2014

CORRUPTION RISKS CATEGORIES	How frequently found in draft laws?	How frequently found among other risks identified?	How frequently author accepted to remedy the risk?
1. Ambiguous linguistic formulations	14%	13%	60%
2. Conflicting provisions	22%	22%	50%
3. Faulty reference provisions	2%	2%	0%
4. Excessive administrative discretions	37%	46%	86%
5. Excessive requirements to fulfill rights	7%	5%	100%
6. Limited access to information	4%	3%	0%
7. Lack of control mechanisms	8%	5%	40%
8. Unclear liability and lack of sanctions	6%	4%	0%
TOTAL (effectiveness of corruption proofing)			68,5%

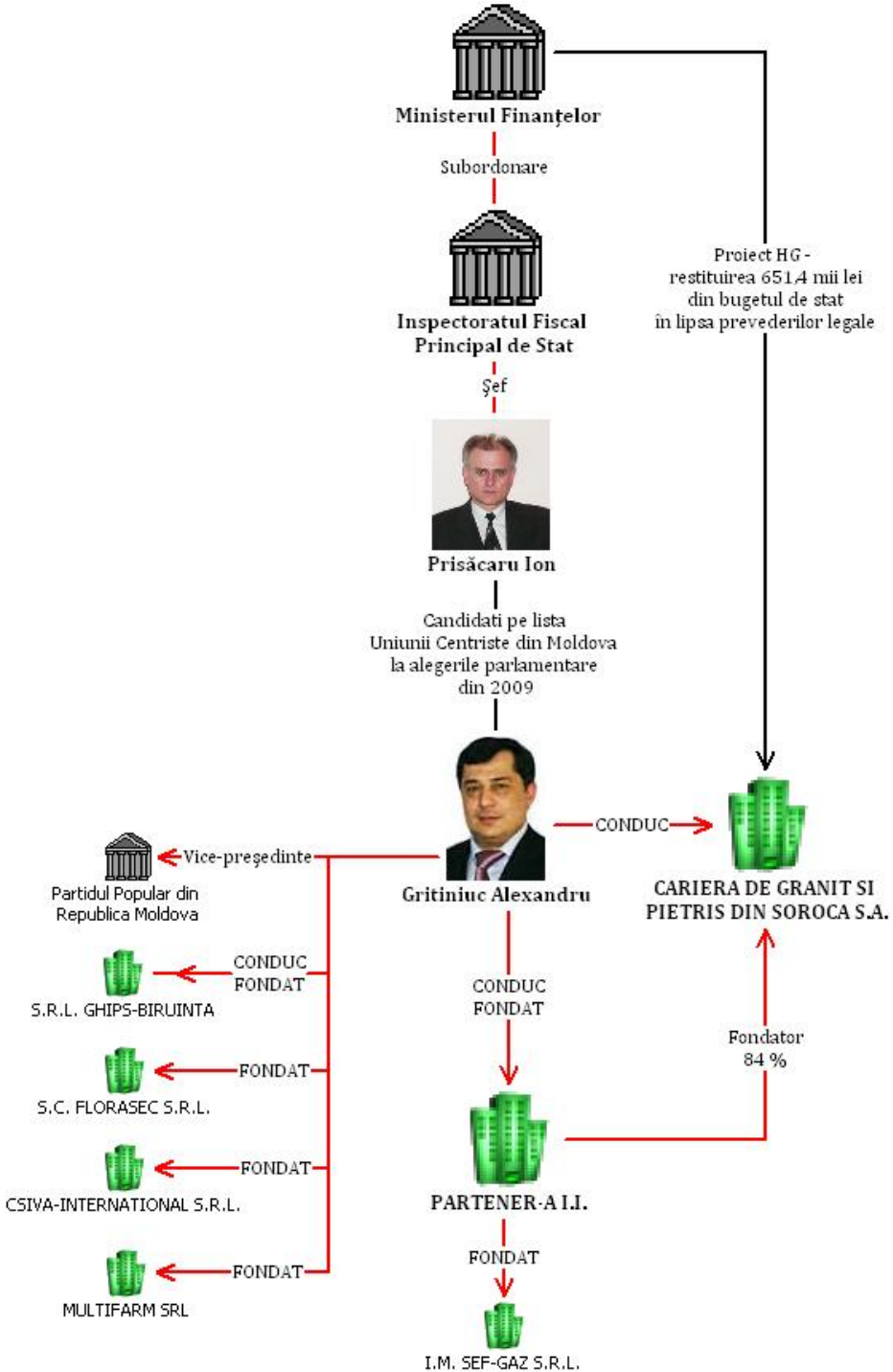
Interesting trends

- MPs – 3 times more often the Government promoting private interests

- Government – 2 times more often promoting broadening of its discretionary powers

Examples of private interests promotion identified in drafts

- Public-private partnerships
- Changing land destination
- Exceptional tax exemptions
- Unjustified payments


Ministerul Finanțelor
Subordonare
Inspectoratul Fiscal Principal de Stat
Șef
Prisăcaru Ion
Candidati pe lista Uniunii Centriste din Moldova la alegerile parlamentare din 2009
Proiect HG - restituirea 651,4 mii lei din bugetul de stat în lipsa prevederilor legale
Gritiniuc Alexandru
CONDUC
CARIERA DE GRANIT SI PIETRIS DIN SOROCA S.A.
Vice-preşedinte
Partidul Popular din Republica Moldova
CONDUC
FONDAT
S.R.L. GHIPS-BIRUINTA
FONDAT
S.C. FLORASEC S.R.L.
FONDAT
CSIVA-INTERNATIONAL S.R.L.
FONDAT
MULTIFARM SRL
CONDUC
FONDAT
Fondator 84 %
PARTENER-A I.I.
FONDAT
I.M. SEF-GAZ S.R.L.

Lessons learnt

- Specialization of experts needed
- Secures quality drafting
- Secures drafting in public interest
- Solution is more important than critique
- Usefulness limited in time
- Later “recycling” of good ideas
- State expertise is useful in identifying concrete promotion of private interests

"Let the laws be clear, uniform and precise; to interpret laws is almost always to corrupt them."

Voltaire