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Corruption Risk Assessment in Legislation: Serbian experience

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Corruption risks in legislation

Recognizing and eliminating risks of corruption in legislation is an important preventive measure in the fight against corruption.

Corruption risk is a possibility resulting from legal provisions of favoring the occurrence of corruption in the course of implementation of those provisions.

If legislative provisions are clear and precise, there is less ability for interpreting and implementing regulations in such a way as to use public competences for private interests of civil servants or public officials implementing the regulation.

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Corruption risks in legislation

Corruption risks find their way in regulations either by intention or as a result of negligence of law drafters.

Presence of corruption risks in legislation does not necessarily lead to actual corruption acts.

Since corruption risks keep door open for corruption, they must be eliminated from legislation.

Up-to date experience shows that the legislative drafting process has a direct impact on the quality of legislation. Unfortunately, this process often has a number of deficiencies in practice, which are primarily caused by the fact that draft laws are regularly drafted in a small, closed circle of public authorities.

Namely, it is not seldom that the Government addresses laws to the assembly procedure without prior public discussion.

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Role of the Anti-Corruption Agency

Within its competences related to launching initiatives for amending and adopting anti-corruption regulations, the ACA conducts analyses of regulations and corruption-prone areas.

Having recognized the importance of this preventive measure, the ACA developed a Methodology for assessing risks of corruption in regulations, as an internal act of the ACA.

Based on the Methodology, the ACA conducts analyses of regulations and issues opinions on the corruption risk assessment of these regulations.

In last two years, the ACA analyzed 32 draft laws and two proposals of decrees and submitted opinions on the corruption risk assessment in the provisions of these regulations to the competent authorities.

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Implementation of the Methodology for Corruption Risk Assessment

The ACA, in its initiative for amendments to the Law on the ACA, suggested that it should have the competence to prescribe and publish the Methodology for Corruption Risk Assessment in legislation, and that the proposers should take on the obligation to apply this methodology when preparing regulations.

According to the National Anti-Corruption Strategy and the Action Plan for its implementation (2013), the Rules of Procedure of the Government and of the Parliament should be amended, thus prescribing the obligation of the Government to submit draft laws to the ACA in order to obtain its opinion. The Government shall consequently submit the respective opinions along with the laws to the Parliament.

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Implementation of the Methodology for Corruption risk assessment

The ACA will be verifying whether proposers of draft laws have applied the Methodology in the process of drafting regulations, and assessing whether the individual provisions of those regulations contain risks of corruption.

The most common deficiencies of draft laws

The most common deficiencies of the analyzed draft laws are the insufficient clarity of provisions and providing broad discretionary powers to public authorities when it comes to their implementation.

Also the regulation of certain issues is left to the ministries, which regulate them through bylaws, even though these issues need to be regulated by laws' provisions.

The other corruption risks are the occurrence of legal gaps, use of terms which are not defined within the draft law, lack of harmonization between certain provisions and incorrect quotation.

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Opinion on the corruption risk assessment in regulations

The opinion on the corruption risk assessment in regulations contains the ACA's findings and recommendations for eliminating corruption risks from laws' provisions and improving the text of the analyzed draft laws.

The ACA submits the opinion to the ministries, the Government and to the National Assembly and presents it to the public through its website.

The ACA is unable to assess the comprehensive effect of these opinions due to the fact that in most cases the proposers do not notify the ACA on whether they had accepted the recommendations, partially or in full.

There have been positive cases in which the competent ministries cooperated with the ACA in the process of drafting the law, and accepted its suggestions and recommendations for eliminating risks of corruption.

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Standard structure of the opinion on the corruption risk assessment in regulations

- **General and Substantive Evaluation of the Corruptibility**

General information on author and category of the act; Goal of the act; Explanatory note of the act; Establishing and promotion of interests/benefits contrary to the public interest; Compatibility of the draft with the provisions of the national legislation; Linguistic formulation of the draft; Regulation of the activity of the public authorities etc.

- **Detailed Analysis of the Corruption risks in the draft's provisions**

- **Conclusion**

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Thank you for your attention!

Q&A