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CORRUPTION RISKS IN LEGISLATION AS A CRITICAL CHALLENGE TO ITS EFFECTIVENESS

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Effective legislation serves as the backbone of good governance. Nonetheless, in many jurisdictions, laws themselves become instruments or enablers of corruption due to poor drafting, lack of oversight, or systemic weaknesses. Understanding how corruption risks materialize and how they impair legislation is essential for improving legal frameworks and institutional integrity.

Corruption risks or corruptogenicity of legislation is the ability of certain provisions of legal acts or even their combination to increase or promote the commission of corruption crimes or create conditions for such situations to occur.

The corruptogenicity of laws may be the result of deliberate unlawful political influence motivated by interests that openly contradict the principles of the rule of law and are aimed at distorting the law in favour of individuals and private interests. On the other hand, legislators may unintentionally adopt inadequate or ineffective laws, even if they pursue legitimate political goals free from any undue influence. This may occur due to factors such as:

(a) careless or counterproductive legal policy development, which in turn may lead to a crime-inducing regulatory situation and/or to over-regulation or deregulation;

(b) imperfect legislative technique, which may result in vague, ambiguous, or ineffective regulatory provisions;

(c) ineffective enforcement of the law (insufficient compliance with legal prohibitions and requirements) [1].

These factors, whether deliberate or inadvertent, undermine legislative effectiveness and public confidence. Without effective internal controls, expertise, and audits, the corruptogenicity of certain legal provisions can ruin the effectiveness of legislation.

1. Anti-corruption expertise to improve the effectiveness of legislation

Anti-corruption expertise is aimed at identifying and preventing corruption in drafts of legislation. In Ukraine, it is conducted by the relevant committees of Parliament – the Verkhovna Rada of Ukraine, the Ministry of Justice of Ukraine, and the National Agency for Corruption Prevention (NACP).

It should be noted that the Ministry of Justice of Ukraine has developed a Methodology for conducting anti-corruption expertise, approved by Order No. 1395/5 dated 24 April 2017. It defines anti-corruption expertise as an activity aimed at identifying provisions in regulatory legal acts and draft regulatory legal acts which, either independently or in combination with other norms, may contribute to the commission of corruption offences or offences related to corruption.

According to paragraph 1.8 of the Methodology, the following corruptogenicity factors are subject to identification and assessment during the examination of regulatory and legal acts:

(a) unclear definition of the functions, rights, duties, and responsibilities of state authorities and local self-government bodies, persons authorised to perform state or local self-government functions;

(b) creation of excessive burdens for recipients of administrative services;

(c) absence or vagueness of administrative procedures;

(d) absence or shortcomings of competitive (tender) procedures [2].

Anti-corruption expertise is an effective preventive tool. In January 2024, the NACP reviewed 392 draft regulatory acts, including 300 from the Cabinet of Ministers and 92 draft laws, identifying corruption risks in seven draft laws and conducting corresponding assessments [3].

However, anti-corruption expertise is most effective at the drafting stage and often fails to address risks that emerge during implementation. For example, discretionary powers may appear benign in draft form but

enable corruption when applied inconsistently. To address this, expertise must extend beyond drafts to monitor real-world application, incorporating feedback from enforcement agencies and civil society.

2. Legal monitoring of legislation and the Post-legislative scrutiny

Once legislation is enacted, identifying and mitigating corruptogenic factors requires ongoing evaluation through legal monitoring or post-legislative scrutiny (PLS)[1], which helps to identify the corruption risks of law and can be a database for the adoption of a new law or improving the existing one.

Legal monitoring of legislation, which is a very similar process to Post-legislative scrutiny, is regulated by the Law of Ukraine "On Lawmaking Activity" adopted by the Verkhovna Rada on August 24, 2023, and enacted one year after the termination of martial law. While it is regulated by law, the process of Legal monitoring still has no methodology in Ukraine, and the corruptogenicity of law is not among the indicators of legislation ineffectiveness. At the same time, the analysis of the corruptogenicity of legislation, i.e,. the ability of a law to generate corruption or corrupt practices should be a part of the Methodology for Legal Analysis of the Effectiveness of Legislation while conducting legal monitoring of legislation [4, p. 28].

3. The most significant factors that point out Corruption Risks in Legislation

According to some Transparency International experts, the law should be easy to understand, simple to apply, not require a lot of judgment in determining its applicability, and not give rise to technical discussions to have no corruption risks [5]. But the question is how these corruption risks should be considered while conducting legal monitoring and the analysis of the corruptogenicity of legislation? There are plenty of them, and each ineffective law that doesn't work but exists in legislation can be a corruption risk itself, as it provides some possibilities to think that laws are not working properly, can be broken without any legal consequences.

The following categories summarize the primary corruption risk factors in legislation, with examples and implications:

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[1] PLS is the process by which a parliament or other body evaluates the implementation and impact of a law after it has been enacted, to ensure the law achieves its intended purpose and to identify potential improvements. This tool helps lawmakers understand how a law affects citizens and society, whether its policy objectives were met, and if its implementation was efficient and effective.

Resource: Franklin De Vrieze Global Community of Practice on Post-Legislative Scrutiny URL: https://agora-parl.org/blog/global-community-practice-post-legislative-scrutiny

Poor Quality of Legislation and Ambiguity

Legislation with vague definitions, weak enforcement mechanisms, excessive exemptions, or opaque drafting processes is highly vulnerable to abuse. For example, a public procurement law with unclear evaluation criteria may allow officials to favor specific bidders, undermining competition. Ambiguous laws also create loopholes, as seen in some jurisdictions where poorly defined tax exemptions have enabled fraudulent claims. To mitigate this, drafters should prioritize precise language and transparent consultation processes, involving stakeholders such as civil society and independent experts.

Structural Intent and Hidden Interests

In some cases, laws are drafted to benefit specific groups or serve corrupt agendas. Without transparency and accountability in legislative drafting, such structural capture remains unchecked. Some ineffective laws have a declarative purpose that is proclaimed by the legislator, while the real aim of the new legal regulation is hidden from society in its content, which can be understood only by professional lawyers. To counter this, legislative drafting must incorporate public consultations, mandatory disclosures of stakeholder influence, and independent oversight to ensure alignment with the public interest.

Conflicting legislation and excessive discretionary powers

A large number of regulatory acts that contain conflicting provisions often create excessive discretionary powers and regulate overly broad competences of officials and public servants, etc. Such conflicts in legislation increase its corruption potential, i.e., the ability of the law to generate corruption or corrupt actions, which hinders the effective application of legislation. At the same time, while some gaps and conflicts can be resolved in the process of implementing legislation, for example, through the formation of judicial practice, certain gaps in legislation can only be resolved by the legislative branch. Thus, the Supreme Court in Ukraine adopts quasi-precedential decisions and can overcome gaps and conflicts in legislation, but judges cannot create new legal regulations [6, p. 194].

Corruption risks in legislation pose a formidable challenge to effective governance, undermining the rule of law and public trust. These risks stem from flawed drafting, opaque processes, weak enforcement, and systemic institutional vulnerabilities. Preventive strategies, such as anti-corruption expertise, and corrective measures, like legal monitoring and PLS, are essential for identifying and mitigating corruptogenic factors. By integrating corruptogenicity analysis into legislative processes, promoting transparency, and building institutional frameworks, governments can enhance legislative effectiveness and combat corruption. Effective legislation requires both

institutional frameworks and sustained political will to combat corruption and prevent its recurrence.

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