



TERMS OF REFERENCE

- A. Job Title:** Team of two local consultants (legal and economic) to strengthen the capacities of NAC in performing anti-corruption proofing of the draft normative acts by evaluating its impact
- B. Duty Station:** Chisinau, Republic of Moldova
- C. Project reference:** Curbing Corruption by Building Sustainable Integrity in Moldova
- D. Contract type:** Individual Contract (IC)
- E. Duration and workload:** August 2019 – May 2021; up to 45 working days for the legal consultant/team leader; up to 40 working days for the economic consultant

F. Background:

Anticorruption proofing of normative acts represents a process of the identification of corruption risks which can emerge in relation to the process of promoting normative acts by public entities, identification of the factors generating such risks and formulating recommendations to exclude such risks in the content of draft normative acts. It was introduced as a mandatory tool in 2006 and is carried out by the National Anticorruption Center. The current methodology for anticorruption proofing expertise was adopted in 2017.

According to the Integrity Law no.82/2017, all draft normative acts drafted by public entities shall pass the anticorruption proofing, except:

- a) policy documents;
- b) acts on the staff reshuffle of individual character;
- c) Government dispositions;
- d) Government Decisions on the approval of the reviews of draft laws and the Decrees of the President of the Republic of Moldova;
- e) International treaties, acts of investment with full powers and of expressing the consent of the Republic of Moldova to be bound by an international treaty.

Anticorruption proofing has the following objectives:

- Prevention of corruption acts by excluding the risk factors from the draft normative documents;
- Information of the authors and of the public at large on the risk factors and corruption risks identified in a draft document;
- Offering supplementary guaranties that the legislative process is in compliance to the citizens' interest and the public interest.

Within the corruption proofing process, the NAC experts identify the legal norms' corruptibility factors and formulate conclusions and recommendations on excluding or diminishing their effects. According to the NAC 2018 Activity Report, out of the total of 1015 drafts that were subject to anticorruption proofing expertise, 327 - were draft laws (in 2017 - 301), 629 - draft

Government decisions (in 2017 - 511) and 59 - departmental draft acts (in 2017 - 30). According to the Report, the most frequent corruption risks identified through the anticorruption proofing were ambiguous formulations that allow for abusive interpretations – 595; lack / ambiguity of administrative procedures - 580; legal loopholes - 465; duties/powers that allow derogations and abusive interpretations - 416, etc., as well as the risks related to conflicts of interest and / or favoritism, excess of service duties, undue influences, influence peddling, active corruption, passive corruption, etc. The practical application of such uncertain norms and provisions, without additional clarification, creates favorable conditions for corruption acts.

Of the total recommendations submitted in the anticorruption expert reports and accepted by the authors of the projects in 2018, the efficiency of anticorruption proofing expertise amounts to approximately 70% (in 2017 - 59.56%).

According to the Study “Legislating the interests: *quid prodest* (who will benefit)? Findings of the Anticorruption Expertise (2010 – 2015)”¹ commissioned by UNDP in 2016, the highest incidence of the corruption factors in the drafts submitted for the anticorruption proofing expertise was registered in the category of “Excessive discretions of public authorities”, accounting for a total share of 42.2% of the total corruption risks; followed by the category “Ambiguous linguistic formulations” – accounting for 21.0%. A total of seven categories of private interests had been analyzed: exemption from fiscal and customs fees; debt forgiveness; land use change; public-private partnerships; exemptions from trade rules; creation of the industrial parks; and public authorities budget favoring. The analysis demonstrated that most frequently private or corporate interests were promoted in the field of budget and finance and of the labor legislation, social insurance, health and family. According to the estimates of the costs of the draft legislation categorized as promoting some interests (where such estimation was possible), the anticipated public prejudice of normative acts retracted as the result of anticorruption proofing was at 198,340,946 MDL lei (almost USD 10 mln) and public prejudice of normative acts adopted in spite of the conclusions of the anticorruption proofing was estimated at 371,187,304 MDL (USD 18,5 mln).

UNDP, through its project “Curbing Corruption by Building Sustainable Integrity in Moldova” (further the Project) aims to strengthen the capacities of NAC in performing anti-corruption proofing expertise of the legislation by evaluating its impact and delivering recommendations on improving the process to ensure a higher impact of anticorruption proofing. In this context, the project intends to contract a team of two local consultants (legal and economic) to assess the impact of the anticorruption proofing of normative acts in the period of 2016 – 2018 and in the period 2019 - 2020 and deliver recommendations on improving the process.

G. Objective:

The main objective of the assignment is to evaluate the impact of the corruption proofing of the normative acts in the period of 2016 -2018 and 2019 - 2020 and to deliver recommendations on improving the process to ensure the highest possible impact on corruption prevention.

H. Scope of work and expected outputs

The consultancy will be conducted in 2 phases:

¹ <http://www.md.undp.org/content/moldova/en/home/presscenter/pressreleases/2016/12/15/-n-ce-m-sur-interesele-private-afectezprocesul-legislativ-.html>; <http://cna.md/libview.php?l=ro&idc=5&id=1411&t=/Mass-media/Comunicate-de-presa/Studiu-CNA-despre-cuminteresele-private-afecteza-procesul-legislativ>

- 1) September – November 2019: Analytical report on the Assessment of the period of 2016 – 2018;
- 2) February – April 2021: Analytical report on the Assessment of the period of 2019 - 2020

Each of the two Studies will have five major outputs:

- 1) Methodological framework for the assessment of (anticipated) prejudice caused by normative acts reviewed and adjusted (based on the methodology applied in the Study *"Legislating the interests: quid prodest (who will benefit)? Findings of the Anticorruption Expertise (2010 – 2015)"* commissioned by UNDP in 2016);
- 2) Analysis and assessment of the caused and anticipated (substantial) prejudice of normative acts proofread by NAC, including:
 - Analysis and economic assessment of the (substantial) anticipated prejudice of normative acts retracted as the result of anticorruption proofing;
 - Analysis and economic assessment of the (substantial) prejudice of legal and normative acts adopted in spite of the anticorruption proofing conclusions/recommendations
- 3) A typology of draft normative acts generating prejudice;
- 4) A list of draft normative acts that eluded anticorruption proofing;
- 5) A set of recommendations on improving current process of proofing to ensure the highest possible impact on corruption prevention.

In order to achieve the objective and deliver outputs, the consultants shall:

As the legal consultant/team leader:

- Analyze normative acts exposed to anticorruption proofing during the period of 2016 – 2018 and 2019 - 2020;
- Based on the economic assessment conducted by the economic consultant, develop an analytical assessment of the anticipated (substantial) public prejudice of normative acts retracted as the result of anticorruption proofing and public prejudice of normative acts adopted in spite of the anticorruption proofing conclusions/recommendations;
- Together with the economic consultant review and adjust the methodological framework for the assessment of (anticipated) public prejudice caused by normative acts;
- Develop a typology of draft normative acts generating public prejudice;
- Develop a list of draft normative acts that eluded anticorruption proofing;
- Based on the aforementioned inputs, develop two analytical reports on the impact evaluation of the anticorruption proofing of normative acts in the period of 2016 – 2018 and 2019 - 2020 and deliver recommendations on improving the current process of proofing to ensure the highest possible impact on corruption prevention;
- Validate the assessment reports and recommendations with NAC and relevant stakeholders, including presentation in a public event.

As the economic consultant:

- In collaboration with the legal consultant/team leader review and adjust the methodological framework for the assessment of (anticipated) public prejudice caused by normative acts;
- Conduct economic/cost assessment of the anticipated (substantial) public prejudice of normative acts retracted as the result of anticorruption proofing and economic/cost assessment of the (substantial) public prejudice of normative acts adopted in spite of the anticorruption proofing conclusions/recommendations during the period of 2016 – 2018 and 2019 - 2020 (around 60 acts in total);
- In collaboration with the legal consultant/team leader validate the analytical reports on the impact evaluation of the anticorruption proofing of normative acts in the period of 2016 – 2018 and 2019 - 2020 and recommendations with NAC and relevant stakeholders, including presentations in public events.

Note: National consultants shall clearly indicate the position they are applying for.

I.1. Deliverables and expected timeline for the legal consultant/team leader:

#	Deliverable	Deadline
1.	Activity Plan and timeframe, including tasks and timeline for the economic consultant, developed	3 day By 2 September, 2019
1.	Methodological framework for the assessment of (anticipated) public prejudice caused by normative acts reviewed and adjusted	3 days By 10 September, 2019
2.	Draft analytical report on the impact evaluation of the anticorruption proofing of normative acts in the period of 2016 – 2018, including typology of draft normative acts generating (substantial) public prejudice; a list of draft normative acts that eluded anticorruption proofing and recommendations to improve the proofing process submitted and validated with NAC, project and relevant stakeholders	16 days By October 30, 2019
3.	Final analytical report on the impact evaluation of the anticorruption proofing of normative acts in the period of 2016 – 2018 submitted and presented in a public event	4 days By November 20, 2019
4.	Draft analytical report on the impact evaluation of the anticorruption proofing of normative acts in the period of 2019 – 2020, including typology of draft normative acts generating (substantial) public prejudice; a list of draft normative acts that eluded anticorruption proofing and recommendations to improve the proofing process submitted and validated with NAC, project and relevant stakeholders	14 days By April 15, 2021
4.	Final analytical report on the impact evaluation of the anticorruption proofing of normative acts in the period of 2019 – 2020 submitted and presented in a public event	4 days By April 25, 2021
5.	Report on the execution of the assignment as per the contract submitted	1 day By April 30, 2021

Up to 45 working days

I.2. Deliverables and expected timeline for the economic consultant:

#	Deliverable	Deadline
1.	Methodological framework for the cost assessment of (anticipated) prejudice caused by normative acts reviewed and adjusted	3 days By 10 September, 2019
2.	Economic/cost assessment of the anticipated (substantial) public prejudice of normative acts retracted as the result of anticorruption proofing and economic/cost assessment of the (substantial) public prejudice of normative acts adopted in spite of the anticorruption proofing in the period of 2016-2018 conducted	15 days By October 20, 2019
3.	Draft analytical report for 2016-2018 validated with NAC, project and relevant stakeholders	1 day By October 30, 2019
4.	Final analytical report on the impact evaluation of the anticorruption proofing of normative acts in the period of 2016 – 2018 submitted and presented in a public event	3 days By August 20, 2016
5.	Economic/cost assessment of the anticipated (substantial) public prejudice of normative acts retracted as the result of anticorruption proofing and economic/cost assessment of the (substantial) public prejudice of normative acts adopted in spite of the anticorruption proofing in the period of 2019-2021 conducted	13 days By April 10, 2021
6.	Draft analytical report for 2019 – 2020 validated with NAC, project and relevant stakeholders	1 day By April 15, 2021
7.	Final analytical report on the impact evaluation of the anticorruption proofing of normative acts in the period of 2016 – 2018 submitted and presented in a public event	3 days By April 25, 2021
8.	Report on the execution of the assignment as per the contract submitted	1 day By April 30, 2021

Up to 40 working days

Note: Deliverables and final timeline can be amended or specified for the purpose of the assignment.

Deliverables and final timeline for economic consultant will be defined by the legal consultant/team leader.

Payment will be made upon the successful completion of the tasks assigned.

J. Organizational Setting:

This is a part-time consultancy. The expert will report to the Team Leader and will work with the management and staff of the National Anticorruption Centre for substantive aspects of the assignment, and under the direct supervision of the UNDP Project Manager – for administrative aspects. The consultant will submit the Report on the execution of the assignment as per the contract to UNDP Project Manager.

K. Inputs:

The National Anticorruption Centre will provide the expert with the necessary information and materials for the fulfilment of tasks. UNDP will provide administrative and logistical support in organisation of the public consultations, as necessary.

L. Qualifications and skills required:

For the legal consultant/team leader

I. Academic Qualifications:

- Master's Degree or equivalent (5 years of University studies) in Law.

II. Years and sphere of experience:

- At least 6 years of proven professional experience in legal drafting and analysis of normative acts
- At least 6 years of experience related to corruption prevention in a public institution/NGO/international organization

III. Competencies:

- Excellent knowledge of Moldovan legislative process demonstrated by previous assignments;
- Excellent knowledge of corruption prevention normative framework demonstrated by previous assignments;
- Knowledge of principles, legal and normative framework regulating anticorruption proofing of legislation demonstrated by previous assignments will be a strong advantage;
- Strong analytical and report writing skills demonstrated by previous assignments;
- Strong communication and teamwork/coordination skills demonstrated by previous assignments;
- Previous successful experience in development assistance or related work for a donor organization, in particular UNDP, governmental institutions, NGO/think-tank or consulting firm is a strong advantage;
- Knowledge of English, Romanian, Russian languages for the purposes of the assignment;

IV. Personal qualities:

- Proven commitment to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility, Flexibility, Punctuality.

For economic consultant

I. Academic Qualifications:

- Bachelor's Degree in Economics, Finance, Public Administration or other relevant field.

II. Years and sphere of experience:

- At least 4 years of proven professional experience in economic and financial assessments, policy analysis, strategic planning or other related field.

III. Competencies:

- Experience in conducting economic and financial assessments of draft legislation, strategic documents, or similar experience demonstrated by previous assignments;
- Knowledge of the corruption phenomenon demonstrated by previous assignments is a strong asset;
- Strong analytical and report writing skills demonstrated by previous assignments;
- Previous successful experience in development assistance or related work for a donor organization, in particular UNDP, NGO/think-tank or consulting firm is a strong advantage;
- Previous experience in governmental institution is a strong advantage;
- Knowledge of English, Romanian, Russian languages for the purposes of the assignment;

IV. Personal qualities:

- Proven commitment to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility, Flexibility, Punctuality.

The United Nations Country Team in the Republic of Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.