



TERMS OF REFERENCE

A. Job Title: Two local consultants to draft the Guidelines for NAC employees and other relevant civil servants on the anticorruption proofing expertise of the legal and normative acts in the following two sectors:

- 1) Urbanism and constructions;
- 2) Fiscal area.

B. Duty Station: Chisinau, Republic of Moldova

C. Project reference: Curbing Corruption by Building Sustainable Integrity

D. Contract type: Individual Contract (IC)

E. Duration and workload: June – August 2019; up to 20 working days

F. Background:

Anticorruption proofing of legal and 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 2017¹.

According to the Integrity Law no.82/2017, all draft legal and 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.

¹ https://www.cna.md/public/files/colegiu_3/MetodREAacte_norm.dupaSed.Col20.07.18.pdf

Within the corruption proofing process, the NAC experts identify the legal norms' corruptibility factors and formulate conclusions and recommendations on excluding or diminishing their effects². According to the NAC 2018 Activity Report³, 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)* commissioned by the UNDP in 2016⁴, the highest incidence of the corruption factors among the drafts submitted for 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%. Most frequently, the interests were promoted in the area "Budget and finance" and the area "Labor, social insurance, health and family protection legislation". Change of land fields' destination and public private partnerships are also the areas affected by other interests than the public one.

Social, economic and political changes in the Republic of Moldova generate the necessity to amend the existent legislation in the *fiscal area*. In this context, public authorities come with multiple legislative amendments. Considering the complex character of the regulations in this field, there is a need for a thorough analysis of such drafts to ensure that these are guided by the public interest.

Lack of a clear and uniform regulation of relations in the field of *territorial planning and urbanism*, of a clear mechanism for the authorization and execution of construction works, quality assurance of construction and used materials, as well as of a clear mechanism for the professional certification of enterprises prejudices public interest. Moreover, public interest is also affected by the deficient procedures of law application, easy ways of adopting derogatory norms, and a superficial involvement of the population in the decision-making process in the field of urbanism.

To identify and analyze the risk factors and corruption risks, there is a need to review both the draft normative act and the related legal framework regulating the related field/sector. UNDP through the Curbing Corruption by Building Sustainable Integrity Project (further the Project) aims to strengthen the capacities of NAC in performing anti-corruption proofing expertise of the legislation in the aforementioned vulnerable areas with the aim to increase the efficiency and effectiveness of the recommendations proposed to exclude corruption risks. In this context, the project intends to contract two local consultants to draft the Guidelines for NAC employees and

² <https://www.cna.md/reports.php?l=ro>

³ https://www.cna.md/public/files/Raport_de_activitate_CNA_2018_.pdf

⁴ <https://www.cna.md/doc.php?l=ro&idc=117&id=1466&t=/Studii-si-analize/Studii-despre-coruptie/Procesul-legiferarii-intereselor-quid-prodest-cine-profit-a-Constatarile-expertizei-anticoruptie>

other relevant civil servants on the anticorruption proofing expertise of the legal and normative acts in the following two areas: (1) Urbanism and constructions; (2) Fiscal area.

G. Objective:

The main objective of the assignment is to strengthen the capacities of NAC in performing anti-corruption proofing of legal and normative acts by drafting Guidelines for NAC employees and other relevant civil servants on the anticorruption proofing expertise of the legal and normative acts in the following sectors: (1) Urbanism and constructions; (2) Fiscal field.

H. Scope of work and key responsibilities:

- In close collaboration with the National Anticorruption Centre, analyze and review the existing legal, normative and institutional framework in the given area focusing on the aspects assessed by the Methodology for the anticorruption proofing expertise of normative acts⁵;
- Hold meetings, in-depth interviews, focus group discussions as relevant, with the key stakeholders from relevant public institutions, SCOs, private sector representatives and collect relevant recommendation;
- Based on the relevant sector legislation and the best international practices develop a chapter of the Guidelines for NAC employees and other relevant civil servants on the anticorruption proofing expertise of the legal and normative acts in the given sector. The Guidelines will focus on the analyses of the drawbacks/loopholes of the implementation of the legal/normative framework in the given field, as well as the aspects of regulation, problems (practical aspects, including from the international practice) and solutions to exclude corruption risks;
- The structure of the Guidelines will be based on the aforementioned Methodology for the anticorruption proofing expertise of normative acts and will be coordinated with NAC at the beginning of the assignment;
- Ensure the conformity of the analyzed legislation, the relevance of the information included in the respective chapter of the guidelines, the accuracy of interpreting the aspects of good practices. The information and casuistry presented in the guidelines shall correspond to the national legal context, as well as to reflect international standards in the given field;
- Present recommendations for improving related regulation in the given field;
- Validate findings of the report and recommendations with NAC and main stakeholders.

Specific requirements for the consultant in the field of **Urbanism and constructions**:

- identify drawbacks/loopholes of the legal/normative framework allowing the possibility for the unauthorized (illegal) constructions and the risks of influencing decision-making bodies with the view of adopting favorable decisions on authorizing (legalizing) such constructions;
- systematize the mechanism of activity of the related authorities;
- identify problematic/sensitive/vulnerable aspects of the competences of central public authorities and local public authorities of level I and II related to constructions and urbanism, and of ensuring local administrative autonomy.

⁵ https://www.cna.md/public/files/colegiu_3/MetodREAacte_norm.dupaSed.Col20.07.18.pdf

Specific requirements for the consultant in the field of **Fiscal area**:

- identify disparities of fiscal regulation which can allow double taxation and/or avoiding fiscal obligations/tax evasion;
- identify vulnerabilities of the legal framework upon offering fiscal facilities/exemptions;
- identify requirements, vulnerabilities and opportunities of the fiscal regime in the field of entrepreneurial activity, including through the off-shore jurisdictions;
- identify the vulnerabilities of the institutional regulation of the fiscal administration institutions: competences, risks of admitting duplication of competences, risks of establishing competences not in line with the mandate of the public institution.

Note: National consultants shall clearly indicate the area (sector) they are applying for. One consultant can apply for both areas of consultancy if he/she demonstrates proven required expertise for each area.

I Deliverables and expected timeline:

#	Deliverable	Deadline
1.	Detailed work plan for the assignment reflecting methodological approach to be applied, submitted and validated with NAC and Project	3 days By June 10, 2019
2.	Draft Guidelines for NAC employees and other relevant civil servants on the anticorruption proofing expertise of the legal and normative acts in the given sector, submitted, validated with NAC, project and relevant stakeholders and recommendations collected	13 days By July 30, 2019
3.	Final Guidelines for NAC employees and other relevant civil servants on the anticorruption proofing expertise of the legal and normative acts in the given sector integrating received recommendations, submitted	4 days By August 30, 2019

Up to 20 working days

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

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

J. Organizational Setting:

This is a part-time consultancy. The experts 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 consultants 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 consultant in the field of Urbanism and construction:

- I. Academic Qualifications:
 - Master's Degree or equivalent (5 years of University studies) in Urbanism and construction, Law or other relevant field.
- II. Years and sphere of experience:
 - At least 3 years of professional experience and/or consultancy in the field of Urbanism and construction;
 - At least 3 assignments in drafting complex research and analyses and/or methodological guidelines in the field of Urbanism and construction
- III. Competencies:
 - Excellent knowledge of Moldovan legal and institutional framework in the field of Urbanism and construction demonstrated by previous assignments;
 - Knowledge of international standards and good practices in the field of Urbanism and construction demonstrated by previous assignments;
 - Previous experience of work with local public authorities will be a strong advantage;
 - 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, 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 the consultant in the field of Fiscal area:

- I. Academic Qualifications:
 - Master's Degree or equivalent (5 years of University studies) in Finance.
- II. Years and sphere of experience:
 - At least 3 years of professional experience and/or consultancy in the Fiscal area;
 - At least 3 assignments in drafting complex research and analyses and/or methodological guidelines in the Fiscal area
- III. Competencies:
 - Excellent knowledge of Moldovan legal and institutional framework in the fiscal area demonstrated by previous assignments;
 - Knowledge of international standards and good practices in the fiscal area demonstrated by previous assignments;
 - Previous experience of work with fiscal authorities will be a strong advantage;
 - 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, 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.

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.