

CORRUPTION PROOFING OF LEGISLATION

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In 2019, a total of 7 teachers from a Turkish school in Chisinau were detained by the special services of Moldova and expelled to Turkey, generating a big scandal. It was subsequently qualified as a human rights violation.

Journalist: Was there a violation of human right and of the national legislation of Moldova?

Speaker of the Parliament: You know, the provisions in laws have commas and exceptions...



SHORTEST DEFINITION OF **CORRUPTION**:

Misuse of **office** for private gain

(Klitgaard, Maclean-Abaroa, and Parris, 2000:2)

Abuse of **entrusted power** for private gain

(Transparency International)

THE SOURCE OF CORRUPTION IS...

Office

Position

Powers

Duties

Responsibilities



used for private gain

How do all of these appear?

LAWS, BY-LAWS, ADMINISTRATIVE ACTS...

...while instituting public functions, defining official powers, duties and responsibilities LAWS, BY-LAWS are also creating opportunities for interpreting their intended meaning and therefore generating more or less obvious opportunities for future **corruption**

SIMPLE EXAMPLE

To get a passport, one should present:

A:

Application

Picture 3x4cm

Birth certificate

Payment confirmation

As well as **other documents**

B:

Application

Picture 3x4cm

Birth certificate

Payment confirmation

Residence/domicile confirmation

ANOTHER SIMPLE EXAMPLE

A:

After all the documents are submitted,
the decision to issue the passport is
issued **within a term of up to one year.**

B:

After all the documents are submitted,
the passport is issued within 5 days.

AND ONE MORE EASY EXAMPLE

A:

In case of establishing the breach of no drunk-driving rule by a car driver, the police **may** stop him/her from further driving and apply a fine

B:

In case of establishing the breach of no drunk-driving rule by a car driver, the police **must** stop him/her from further driving and apply a fine

WHEN DID THE NEED FOR CORRUPTION PROOFING FIRST APPEAR?

- 2500 years ago
- 250 years ago
- 10-15 years ago



Socrates: But, Hippias, do you say that law is an injury to the state, or a benefit?

Hippias: It is made, I think, with benefit in view, but sometimes, if the law is badly made, it is injurious.

*(PLATO, HIPPIAS MAJOR, 284D,
IV CENTURY B.C.)*

*“Que toute loi soit claire, uniforme et précise:
l'interpréter, c'est presque toujours la corrompre.”*



*(Dictionnaire philosophique, 1764,
citations de **Voltaire**)*

*“Let all laws be clear, uniform and precise: to interpret laws is
almost always to corrupt them.”*

WHEN DISCRETION OF PUBLIC OFFICIAL TO INTERPRET LAWS IS DANGEROUS?

When he can choose an interpretation of the legal provisions which he prefers

When he can choose a preferred interpretation over the expected by the citizen

When such interpretations can be used for private gain

SOLUTION TO DANGEROUS DISCRETIONS OF LEGAL INTERPRETATION

Corruption proofing (anti-corruption expertise of draft legislation) - a process of review of the draft laws and by-laws, aimed at detecting the provisions favouring or legalizing corruption and other abuses upon application

GOALS OF CORRUPTION PROOFING

- Corruption prevention by eliminating the corruption risk factors from draft laws
- Making the authors of draft laws and the general public aware of the risk factors and the corruption risks identified in the drafts
- Providing additional safeguards to ensure that the legislative process advances the interests of the citizens and the public interest.

HOW DO CORRUPTION RISKS APPEAR IN DRAFT LAWS?

Unintentionally, most of the times, as a result of poor drafting skills of the author

Intentionally, sometimes, but these cases are severe (i.e. in Moldova – attempted draft law on the liberalization of capital and fiscal amnesty, aimed at helping the corrupt officials legalized their criminal assets, while in Romania – attempted draft law to alter criminal liability for crimes at the same time as to when high-level subjects were investigated for that type of crimes).

CORRUPTION PROOFING SPECIFICS

Scope – all draft laws and draft regulatory acts

In charge of mandatory corruption proofing – National Anticorruption Center (NAC)

Timing – once the draft is final in the Government, or when submitted by a member of the Parliament before it is sent out to the Ministry of Justice for legal expertise

Deadline – 10 days, extendable to 1 month

Methodology – written and software, last updated in October 2017

CORRUPTION PROOFING OPINION:

- I. Corruption risks in the legislative process
- II. Risk factors and corruption risks in the draft
- III. Conclusions

DETAILED ANALYSIS OF DRAFT'S PROVISIONS

Article __ paragraph. __ letter __)

...

Objection:

...

Recommendation:

...

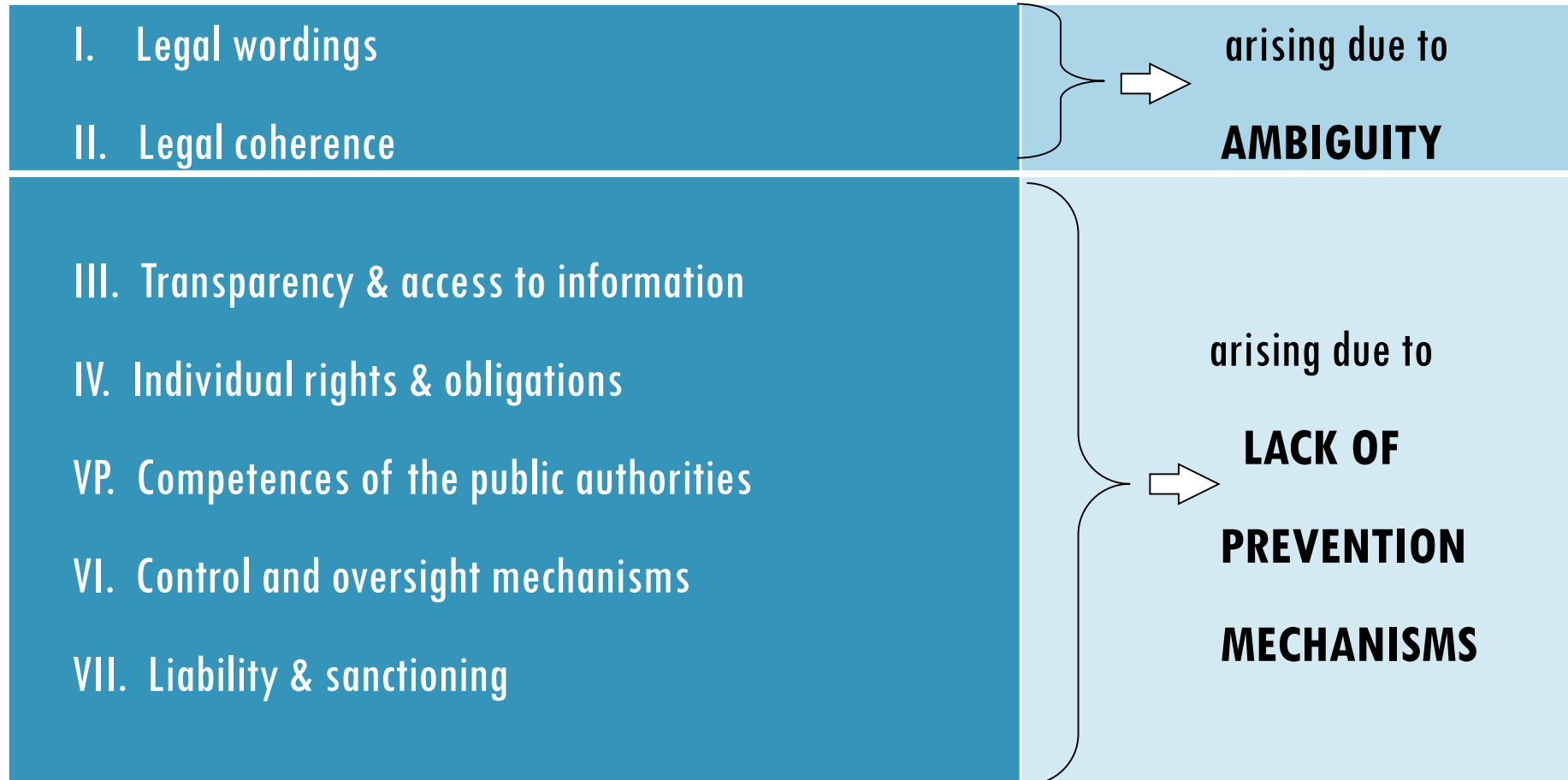
Risk factors:

- ...

Corruption risks:

- ...

CATEGORIES OF CORRUPTION RISK FACTORS:



CORRUPTION RISKS FOUND IN DRAFTS

Facilitating the committing of the crimes of:

Bribe taking

Bribe giving

Abuse of duties

Excess of duties

Illicit enrichment

Money laundering

Tax evasion etc.

Legalizing the crimes of:

Abuse of duties

Excess of duties

Illicit enrichment

Money laundering

Tax evasion etc.

DRAFT LAW ON CAPITAL LIBERALIZATION AND FISCAL STIMULATION:

Article 5. Duties of participants of the capital liberalization and fiscal stimulation

(1) The State Tax Service, Customs Service, National Health Insurance House, cadaster bodies, Ministry of Information Technology and Communications, National Integrity Agency, other institutions and organizations shall be recognized as persons indirectly related to the process of liberalization.

(2) Besides the subjects of capital liberalization and their representatives, the participants of capital liberalization shall be the Ministry of Internal Affairs, National Anticorruption Center, General Prosecutor's Office, other public authorities from abroad, which perform their activity and exercise their duties in the process of capital liberalization according to the provisions of the present law.

Objections:

The provision sets improper roles, contrary to the statute of the public authorities and contradict the legal framework in force. These public authorities cannot participate in capital liberalization process, as they should guarantee fighting against criminal activity, especially in the part related to corruption and money laundering. As the draft sets no verifications of the capital origins, these authorities will be forced to observe helplessly the legalization of criminal assets, without having the possibility to prosecute.

Regarding the “other public authorities form abroad” concerned, the only valid reason why the authorities of other states seem to be included is of hampering potential trans-border investigations from other jurisdictions in which illegal proceeds originate and were liberalized in the Republic of Moldova. In this case, other national authorities mentioned as participants of liberalization (NAC, MIA, GPO) should refuse the collaboration with similar authorities from abroad, because the draft has assigned them the status of participant in capital liberalization.

Recommendations: To exclude art.5

Risk factors:

Ambiguous wordings allowing for abusive interpretations

Conflicting legal provisions

Excessive and improper duties to the status of public authority

Corruption risks:

Legalization of the crimes of:

- illicit enrichment
- money laundering
- embezzlement

Facilitation of the crimes of:

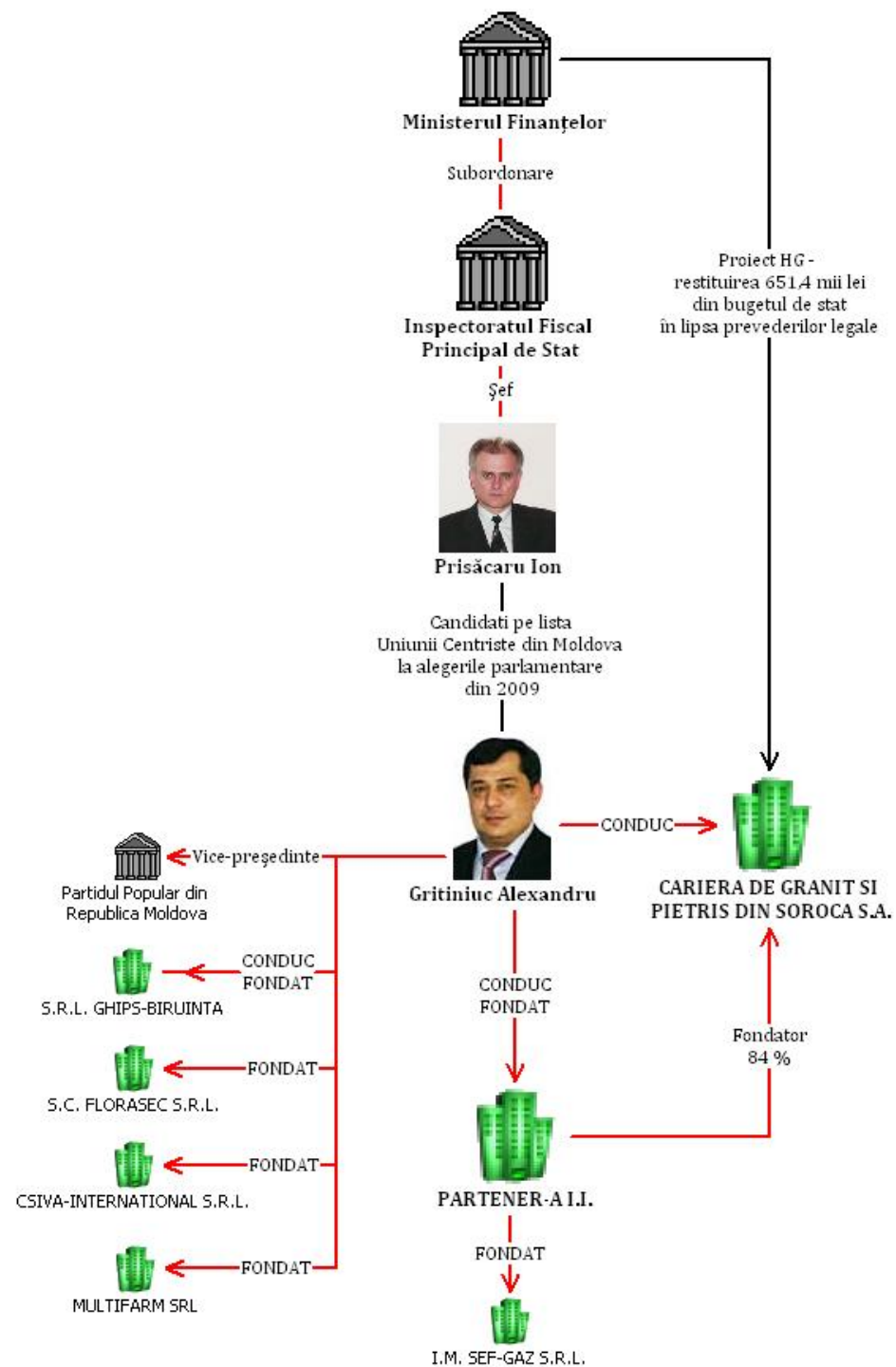
- abuse / excess of duties
- negligence



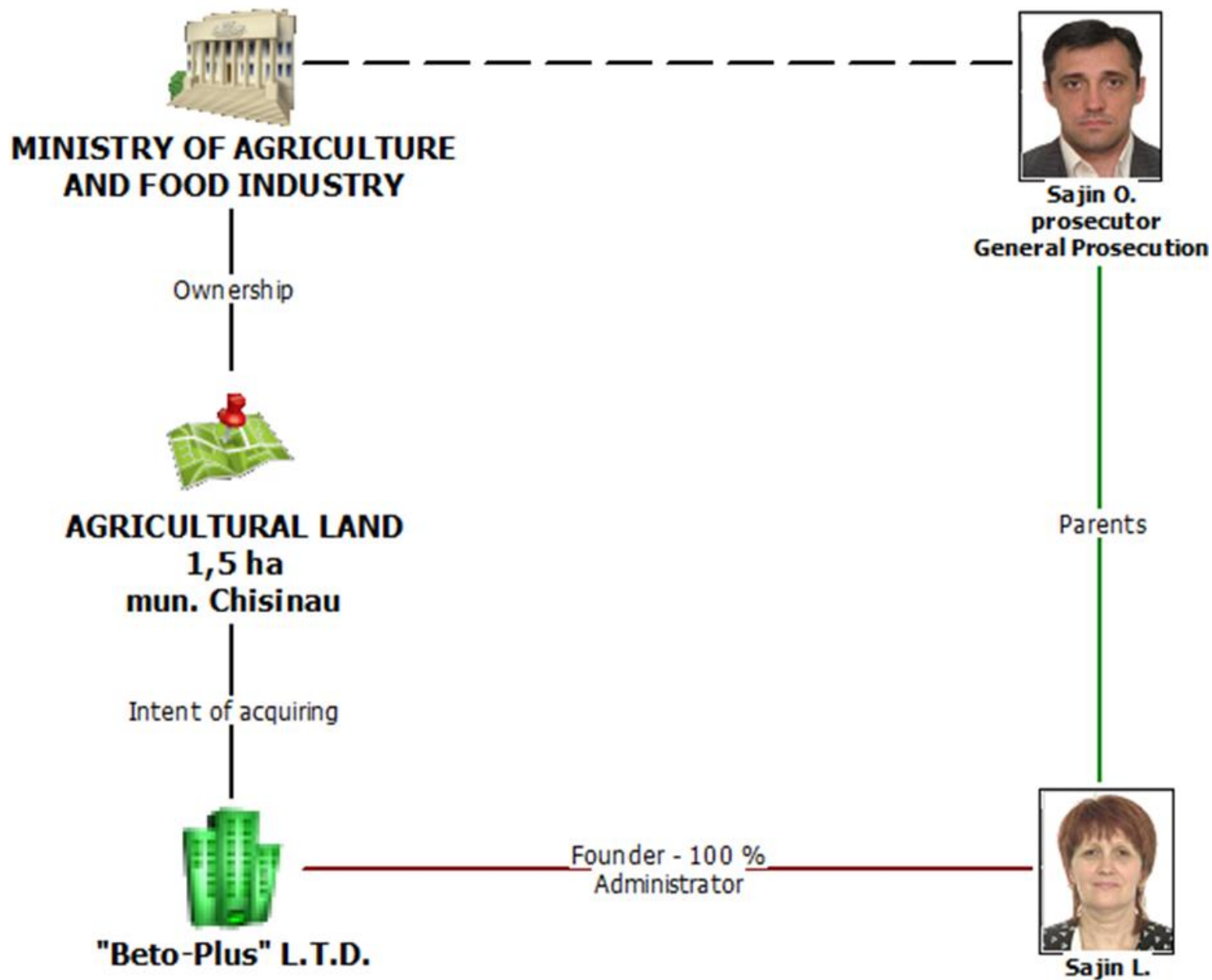
RHETORICAL...

*Who was to be corrupted first:
the man by a law
or
the law by a man?*

RETURNING THE LICENSE MONEY FOR FAILURE TO EXTRACT GRAVEL AND GRANITE...



EXCLUDING 1,5
HECTARES OF
LAND FROM THE
EXCLUSIVE STATE'S
PROPERTY



TYPOLGY OF PROMOTED PRIVATE INTERESTS IDENTIFIED IN DRAFTS

Exemptions from taxes and custom duties

Changing land destination

Public-private partnerships

Changing rules of retail selling

Creation of industrial parks

Financial favouring of certain institutions

Other.

HOW DID WE COME TO DO CORRUPTION PROOFING?

2005 – Concept Paper of the Parliament on Cooperation with the CSOs

2006 – CSO' corruption proofing methodology launched

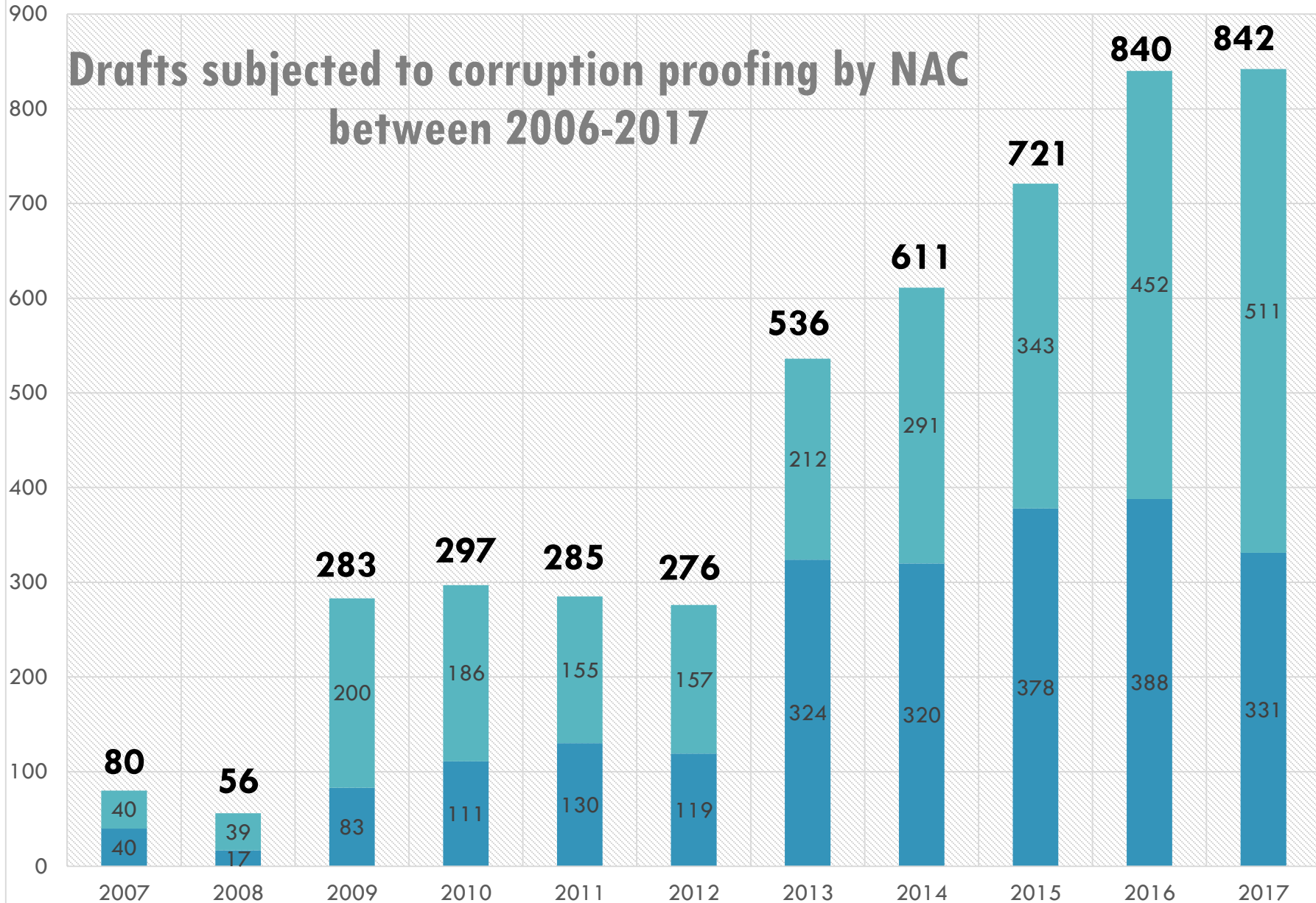
2006 – NAC was obliged through a by-law to carry out corruption proofing

2007 – NAC did the first corruption proofing reports

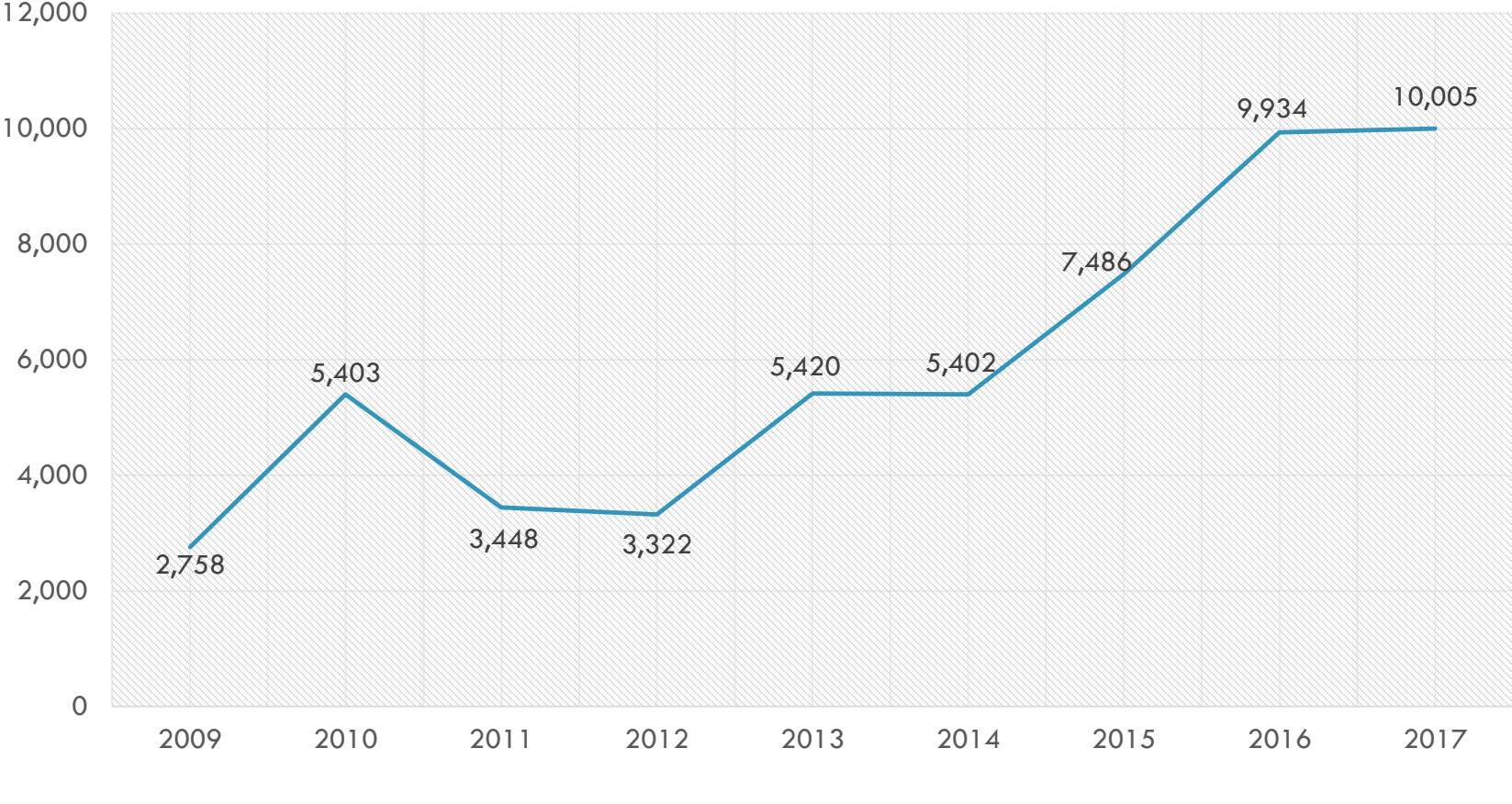
2009 – first software supporting corruption proofing of the CSO adapted for the NAC

2017 – NAC upgraded its methodology and its software

Drafts subjected to corruption proofing by NAC between 2006-2017



Pages of drafts subjects to anti-corruption expertise by NAC between 2009-2017



Total:
53.178
pages

RESOURCES

In NAC:

13 employees in the **General Directorate of Legislation and Corruption Proofing**

3 sections:

- Constitutional, Justice, Administrative law
- Economy, Budget and Finance
- Education, Healthcare, Labour, Culture, Media

Use of a software **e-expertiza** to maintain a standard quality of corruption proofing opinions and measure effectiveness

WHAT MAKES CORRUPTION PROOFING EFFECTIVE?

- Effective communication
- Public pressure
- Media
- High quality opinions
- Simple language, accessible from the Kitchen to the Parliament