



REPORT ON MAPPING

the Corruption Risks and
Business Solutions for
State Inspection in the
Republic of Moldova



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CONTACT ADDRESS:

10/1 Iacob Hincu str., Chisinau, MD-2005 Republic of Moldova

Tel.: (37322) 21 09 32

Fax: (37322) 24 57 14

www.viitorul.org

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Report Goal

In 2017, IDIS “Viitorul”, under the National Business Agenda (NBA), in partnership with the Chamber of Trade and Industry and with the CIPE (Center for International Private Enterprise) support, developed the “Business Anti-corruption Agenda of the Republic of Moldova for 2017 – 2018”, phrasing **five major corruption risks**, priorities and solutions stated by the business people for public authorities, the legal and regulatory framework to fight corruption.

These corruption risks result from the survey conducted last year, involving 511 small and medium-sized companies (the survey can be found at www.viitorul.org or at www.anb.viitorul.org), and from the discussions held with more than 180 Economic Operators from all parts of the country.

One of the corruption risks (**Risk V**) is represented by **state inspection**. Some business people have reported multiple problems and abuses committed in the course of state inspections. They also stated that the current system of state inspections is focused primarily on punitive measures, imposing penalties under any circumstances.

This Report has been developed with the aim to show the gaps, problems and risks associated with state inspections in greater details, as well as to present the solutions, which in the Business view, would improve the inspection process.

The Mapping Report findings are based on the statements and perceptions of the business people, members of the National Business Agenda (NBA), who during March – April 2018 answered the questions of a Questionnaire intended to assess the Economic Operators’ experience related to

state inspections carried out from 28 October 2016 (when major amendments to Law No.131/2012 were made) through 30 April 2018.

A new analysis tool – **process mapping** – has been used in this Report. It implies process documentation from the start till the end, having identified schematically the process phases, their screening to detect the bottlenecks requiring improvements. The mapping facilitates understanding the processes by those who unroll and monitor them, and by those who are affected by such processes. Diagrams are used to this end, which show the sequence of actions forming a process, the way it takes place in reality and how it should take place.

In our case, we mapped the process of state inspection conducted in different companies. All phases of this process were described in compliance with Law No.131/2012 on State Inspection on Business Activity. The mapping goes further with defining the inspection phases in practice, i.e. from inception till completion, having highlighted the gaps and the problems identified during the process of state inspection. Hence, we get a graphical representation of how an inspection looks like on paper versus in practice. Finally, recommendations have been laid down aimed at improving the Economic Operators’ inspecting process.

It is worth noting that the analysis of the state inspection legal framework has been based on the provisions of Law No.131/2012 in the version after 28.10.2016 when many important amendments and addenda made to this Law were enacted. At the same time, the regulatory framework and by-laws related to Law No.131/2012, which were in force during 28.10.2016 – 30.04.2018, were scrutinised

to show the amendments made to many regulatory acts during 2018 due to the state inspection system further reforming.

The state inspection system reform, which was launched in 2016, will take time, while its outcomes will be subject to analysis in a few years after reform completion and full implementation of the new regulatory provisions. However, we deem it useful to find out the business perception to this

end, as an actor and benchmark group to be affected by the reform impact, especially when the business frequently is neither listened to nor consulted in the decision-making process. The core objective is that the business identifies the state inspection system gaps, which generate corruption, and formulate solutions, which, in their vision, would mitigate those corruption risks and build up an efficient and transparent state inspection system.

I. Executive Summary

Since 2013, the principles and procedures for organising and conducting state inspections on business activity were merged in a single legal document, namely Law No. 131/2012 on State Inspection on Business Activity, which is binding for all public authorities/institutions empowered to initiate and conduct inspections.

The Law comprises also the exemptions stipulated for certain Control Bodies. There are public authorities that are governed primarily by their legal documents, when the latter outline other principles and procedures for conducting state inspections. There are Control Bodies that either are not governed by the general inspection rules, as they use those rules only in part, or act by derogation from some legal requirements.

Gradually, the number of Control Bodies was reduced as an institutional reform took place in the area of state inspection on business activity under the general context of the public administration reform carried out in the Republic of Moldova. Following the changes operated in 2016, only 13 Control Bodies have been maintained out of 33, as well as five independent Regulators.

The present Report covers the analysis of state inspections governed by Law No.131/2012 following the amendments and addenda enacted after 28.10.2016. The inspections carried out by the State Labour Inspectorate (SLI) and by the National Agency for Food Safety (ANSA), including the tax inspections carried out by the State Tax Service (STS) were subject to an additional review.

In practice, as per the facts reported by NBA Members, the Control Bodies and Inspectors may deviate from the fundamental principles of inspection, while the rights of the person subject to inspection

are infringed. The Moldovan companies perceive inspections as having the only goal to penalise them, while by the frequency and the way they are carried out inspections create barriers to their activity.

Out of 35 interviewed companies, 28 (80% of respondents) mentioned they were subject to state inspections during 2016 – 2018. Many companies were inspected several times over one year, while 1/3 of them were subject to more than ten inspections. A large majority of inspections were unannounced inspections; only 15% of companies stated they were not subject to such inspections. From the start, this type of inspections is considered to be “risky” for the business environment, as they are initiated based on a petition (submitted by competitors or by unfair people), are not substantiated in many cases and do not require prior notification of Economic Operators.

The State Tax Service, the State Labour Inspectorate and the National Agency for Food Safety are the Control Bodies, which, as per the Economic Operators’ opinion, carried out inspections most frequently during the aforementioned timeframe. The same three Control Bodies were the most off track in terms of complying with the legal requirements laid down for conducting state inspections.

If we look at the State Tax Service, except for the obligation to enter the inspections into the State Register of Inspections, monitor and report them, the Tax Code and in-house guidelines cover all other specific procedures, methods and operations used to organize and conduct tax inspections, which differ from the ones covered by the general law on inspections. Regarding the State Labour Inspectorate and the National Agency for Food Safety, with some exemptions, Law No.131/2012 shall apply to all state inspection stages.

The business people who participated in the Research/Survey identified certain gaps, problems and risks in implementing the requirements set for conducting state inspections at each inspection phase.

Pre-inspection phase:

- failure to meet the minimum and the maximum period for sending the Inspection Approval Form;
- failure to enter all regular inspection plans into the State Register of Inspections;
- inspection overlapping and duplication.

Inspection phase:

- carrying out the inspection within the maximum timeframe provided by the legislation, with no need for that;
- frequent prolongation of the term of unannounced inspections (exceeding the established deadline) with no need for that and without substantiated reasons;
- soliciting information and documents, which are not related to the inspection subject-matter (including personal information or data related to commercial secrecy);
- hindering the regular activity performed by the Economic Operator in the course of inspection;
- inspectors' conduct lacking integrity in certain situations and their poor professional training.

Post-inspection phase:

- applying a large number of penalties and restrictive measures for an unintended breach, which resulted in no material damage and which could be addressed by the Economic Operator;
- setting a tight deadline in prescriptions for remedying the shortcomings;
- lack of desirability and willingness to challenge the Inspection Protocol and other documents issued by the Control Body;

- using unofficial payments (money and gifts) to avoid penalties.

The greatest problem ascertained by the business people is the punitive feature of state inspections. The current system is focused mainly on penalising the Economic Operators even when unintended breaches were committed, which resulted in no material damage and which could be addressed by Economic Operators. Such approaches trigger risks for corruption and enable the Inspectors to get certain unfair material advantage. Imperfect laws governing the business activity, lack of confidence in the judicial system, frequent interaction with Control Body Inspectors determine the attempt to use unofficial means in order to avoid penalties to be more attractive and less costly for an Economic Operator (money, time, personnel).

To eliminate the identified gaps, problems and risks, the Business suggested solutions and recommendations to be taken into account while conducting state inspections at companies:

1. It is necessary to strengthen the informative, advisable and preventive feature of an inspection, through the development of a specific law or by including a rule in Law No. 131/2012, according to which the first inspection visit carried out by public authorities should be informative with no penalties or restrictive measures, granting the Economic Operator enough time to remedy the identified problems.
2. The inspection carried out by the State Tax Service shall be in line with the fundamental principles, general rules and requirements covered by Law No.131/2012 that governs all inspections.
3. The unannounced inspections carried out by the State Labour Inspectorate and by the National Agency for Food Safety shall be duly supervised by the State Chancellery as the body responsible for inspection oversight, and if alleged abuses, illegalities or infringements are detected, the empowered bodies shall be notified.

II. Research Methodology

To scrutinise how a state inspection is carried out in the Republic of Moldova and how corruption risks in the course of state inspections are monitored, 35 interviews were conducted during March – April 2018, involving business people, members of the National Business Agenda (NBA). In this respect, the Economic Operators answered the questions compiled in a Questionnaire, covering all phases and procedures used to perform state inspections on business activity. The questions referred primarily to inspections carried out in compliance with Law No.131/2012, but also to some inspections that are conducted with derogation from the legal requirements or are carried out as per the procedures referred to in other legal documents.

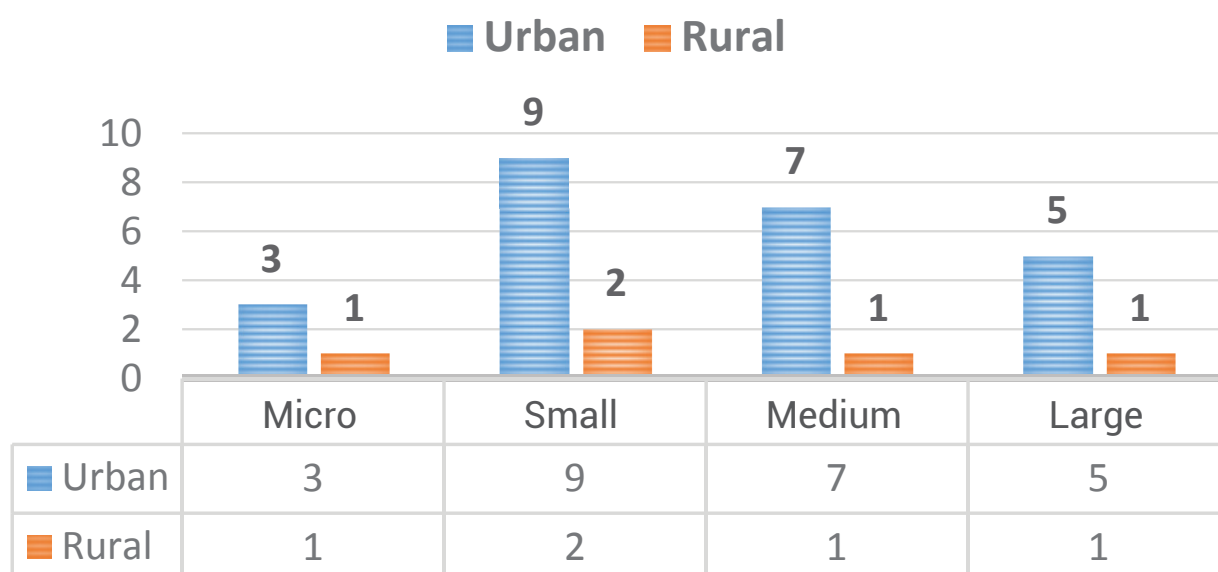
The Questionnaire comprised both closed and open-type questions pursuing the goal to get precise answers from the interviewed people.

The first part of the Questionnaire covered some general information on the number of state in-

spections the Economic Operator was subject to during 2016 – 2018 and the Control Bodies that visited the company most frequently over the same timeframe.

The Questionnaire targeted the collection of data on individual experiences derived from the state inspections conducted and to find out how the process was rolled in reality and identify the bottlenecks, i.e. the problems, concerns and risks. The questions referred to the pre-inspection phase, inspection phase and post-inspection phase, following the substance and procedures outlined by Law No.131/2012 for a state inspection, following the amendments and addenda enacted on 28.10.2016.

The Questionnaire provided also some space where the companies could have phrased proposals to improve the state inspections in the future. The Respondents formulated the measures to be undertaken by companies, Business Associations and Government.



The last part of the Questionnaire covered some general information about the name and activity of the interviewed companies, such as the field of operation, years of work experience, the number of employees, the undertaking size and the residence area. It is noteworthy mentioning that the general information, due to different reasons, including the fear of reprisals, was not completed in full by all interviewed undertakings. Further we would present some statistics derived from the available information.

The interviewed undertakings represent different sectors, such as agriculture (manufacturing alcoholic products, honey processing, etc.), trade, services (transportation, consulting, etc.), light industry, textile, etc.

As for the size of the interviewed companies, the latter covered a whole range, including micro,

small, medium and large-sized undertakings. More precisely, out of the interviewed undertakings, four were micro companies, 11 were small undertakings, and eight were medium firms, while six were large companies.

Based on the inserted data, 24 undertakings reside in the urban area, while five have stated their offices are located in rural settlements.

As a general remark, we should underline that in most cases the undertakings were pretty reticent to offer a real picture of the situation, while some companies were open and eager to share their experience regarding the state inspection process, having stated their real problems and concerns, and phrased useful recommendations for potential changes in the future.

III. Conducting State Inspections on Business Activity

3.1. Legal Analysis of the State Inspection Process

3.1.1. Overview

The legal and institutional framework in the area of state inspections on business activity (hereinafter referred to as the inspection) is covered by Law No.131 of 08.06.2012 on State Inspection on Business Activity (hereinafter referred to as Law No.131/2012), which entered into force on 01.03.2013. The Law outlines the fundamental principles and governs the whole inspection process.

It is worth mentioning that in 2016 the Government launched the public administration reform process in the Republic of Moldova. To this end, the Public Administration Reform Strategy for 2016-2020¹ was approved, which comprises an Action Plan for 2016-2018². The Strategy in question is to be implemented in several stages, involving both the central and the local public administration. The reform was started with the optimization of the number of ministries and public authorities, followed by the reform of public agencies, currently ongoing.

In the given context we shall mention also the reform of the state inspection system on business activity in the Republic of Moldova. According to

the authors' vision, the reform pursues the goal to mitigate the administrative burden on the business environment, eliminate the abusive arrangements and make the state inspection process more transparent.

This reform has been already conducted in several stages, namely:

- **Stage I** – adopting Law No. 230 of 23.09.2016 on amendments and addenda made to some legislative documents, in force as of 28.10.2016;
- **Stage II** – adopting Law No. 185 din 21.09.2017 on amendments and addenda made to some legislative documents, in force as of 27.10.2017;
- **Stage III** – reorganising the control bodies (September – November 2017);
- **Stage IV** – revising the Rules of Procedure of the established control bodies or approving new Rules of Procedure, as appropriate (December 2017– July 2018);
- **Stage V** – approving the state inspection by-laws on business activity.

As a result, the state inspection bodies and the procedures for conducting state inspections are currently under the transition period to complete the new regulatory framework on state inspection. This regulatory framework is not fully-fledged yet

¹ Government Decision No.911 of 25.07.2016.

² Government Decision No.1351 of 15.12.2016.

as not all the required tools to ensure its operability are in place. Besides, no adjustments have been made to the related legal framework and not all by-laws have been developed yet.

The Annex to Law No.131/2012 defines the public authorities / institutions empowered to initiate and conduct inspections. Nowadays, the list comprises 13 Control Bodies. The same Annex displays five public authorities that apply the provisions of Law No.131/2012 to the extent that does not contravene the legal provisions on inspections and monitoring thereof. At the same time, the Law does not apply to some Control Bodies, applies partially or with derogation from some legal requirements.

Table 1. List of Authorities according to Law No.131/2012.

	Authorities covered by Law	Authorities that apply the Law if the latter does not contravene the law that governs the Authority activity	Authorities not covered by Law	Authorities applying the Law partially
1	National Agency for Food Safety	National Agency for Energy Regulation	Prosecuting authorities	The customs Control Bodies apply the Law only during the subsequent customs control through post-clearance inspection and only to the part related to inspection registration, monitoring and reporting in the State Register of Inspections
2	Agency for Consumer Protection and Market Surveillance	National Agency for Regulation in Electronic Communications and Information Technology	Public audit bodies in the area of formation, administration and use of public money and administration of public wealth	The State Tax Service applies the Law only to the part related to inspection registration, monitoring and reporting in the State Register of Inspections
3	Agency for Technical Supervision	Audiovisual Coordinating Council	Control bodies in the financial area (banking and non-banking)	The Control Bodies in the area of transportation (inspection of transporting operations, road vehicles, rolling stock, aircrafts and ships) do not apply the Law to the part related to inspection planning, producing Inspection Plans and their periodicity, inspection initiation and notification, the content and procedure for issuing /registering an Inspection Approval Form
4	National Agency for Public Health	Competition Council	Control bodies of state border crossing	The National Agency for Food Safety (in case of conducting inspections based on Law No.50/2013 and in case of conducting inspections to check compliance with the legislation in terms of occupational safety) does not apply the provisions related to the notification of the Inspection Approval Form at least five business days prior to the day of inspection

	Authorities covered by Law	Authorities that apply the Law if the latter does not contravene the law that governs the Authority activity	Authorities not covered by Law	Authorities applying the Law partially
5	Environment Protection Inspectorate	National Agency for Regulation of Nuclear and Radiological Activities		The Control Bodies inspecting compliance with the legislation in terms of occupational safety and employment relationships do not apply the provisions related to the notification of the Inspection Approval Form at least five business days prior to the day of inspection
6	Customs Service			
7	State Tax Service			
8	National Agency for Road Transportation			
9	Civil Aviation Authority			
10	Naval Agency			
11	National Centre for Personal Data Protection			
12	State Labour Inspectorate			
13	National Agency for Quality Assurance in Vocational Education			

The Law provides a range of fundamental principles and general rules underpinning all inspections. Those principles and rules shall guide the Control Bodies and Inspectors in their activity to act within the limits and in strict compliance with the legal requirements and observe the rights of Economic Operators subject to inspection.

According to the Law, inspections shall be a preventive measure and, therefore, the focus shall be placed on inspection advisory/consulting feature. The Control Body shall not be entitled to initiate an inspection at a company unless all other ways of checking its compliance with the legislation have been exhausted. Moreover, the Law underlines the advisory feature of inspections planned to be

conducted during the first three years of activity as of the date of state registration of an individual involved in business activity, without applying penalties or restrictive measures.

At all inspection phases the Control Bodies and Inspectors shall have the obligation to act objectively and impartially, in strict conformity with the legal requirements, having observed the principle of inspection proportionality and opportunity. From the other hand, the Law provides a series of rights and guarantees for the companies subject to inspection. From the very beginning these shall be presumed as of good faith, have the right to challenge any deed or document produced by the Inspector and ask for remedying the damage caused. According to Law

No.131/2012, an inspection shall not affect and/or suspend the company work; at the same time, it is forbidden to overlap the scope of inspection amongst the Control Bodies.

In the course of inspection, the Control Body may require only the information the company must hold and provide as per the legislation. The Control Body shall not be entitled to initiate the inspection if the information necessary to corroborate compliance with the legislation is already held by it or could be obtained from other control and/or oversight bodies, from official registers or from other sources available to the body concerned.

Based on the provisions of Law No.131/2012, an inspection shall be initiated only following the risk analysis and assessment. To this end, in 2013 the general Methodology for planning state inspections on business activity was approved on the basis of risk criteria subject to consideration³, subsequently replaced by Government Decision No.379 of 25.04.2018, which approved the General State Inspection Methodology on Business Activity based on risk analysis and the Rules for developing, approving and using the check lists within state inspections on business activity. The Methodology substance relies on the distribution of the most important risk criteria relevant for the inspection area, and assigning the appropriate score as per a pre-defined scale, the score being reported against the weight of each criterion depending on its relevance for the general risk level. The scores assigned to each criterion are estimated for each company subject to inspection, being followed by a ranking developed on the basis of obtained scores in accordance with the appraised individual risk level. The latter is used to identify the frequency and intensity of inspections to be carried out at the respective company.

The Control Bodies covered by the provisions of Law No.131/2012, on the basis of the 2013 Methodology, should have developed the Methodologies for inspection planning and submit them to the Government for approval following the analysis of risk criteria for the scope of inspection as-

signed to them by law. Following the revision of the 2018 regulatory framework, the control bodies shall be required to revise their sectoral methodologies in compliance with the General Methodology approved on 25.04.2018.

One of the fundamental principles covered by Law No.131/2012 is the obligation to keep records on all inspection actions and documents. In this respect, in 2013 the Regulation on State Register of Inspections was approved, as well as the registers of inspections maintained by the Control Bodies⁴, replaced by the Regulation on keeping the State Register of Inspections approved by Government Decision No.464 of 23.05.2018. This Regulation defines the procedures and mechanism for registering and keeping records on state inspections on business activity, maintaining databases, the information and IT systems that store and process the data on planned inspections and on the conducted unannounced inspections. The Regulation was aimed to enhance inspection transparency by providing the information related to inspections carried out by the Control Bodies to all interested people.

As the authority that monitors inspections, the State Chancellery developed and launched the automated information system “State Register of Inspections”, and the Government Portal of state inspections on business activity (www.controale.gov.md) was created. The State Register of Inspections represents the platform that shall contain the data on all inspection phases: from the inspection plan to its outcomes and the appeals/complaints lodged by entities/people subject to inspection.

Following the amendments and addenda made to the regulatory framework in 2018, the process of updating the State Register of Inspections has been launched as its previous version failed to meet the requirements stipulated by Law No.131/2012. Likewise, Government Decision No.464 of 23.05.2018 approved single templates for the annual Inspection Plan, Inspection Approval Form and Inspection Protocol.

³ Government Decision No.694 of 5.09.2013.

⁴ Government Decision No.147 of 25.02.2013.

All the provisions and requirements regarding the state inspection covered by Law No.131/2012 shall apply to those two existing types of inspections: planned inspections and unannounced inspections. The first type is an inspection conducted as per the annual Inspection Plan, which was developed on the basis of risk criteria analysis and assessment, to check the compliance with the requirements stipulated by the legislation, while the unannounced inspection is an inspection that was not included in the annual Inspection Plan, which shall be conducted also on the basis of risk analysis to check the compliance with the legislation, which shall be initiated in the circumstances expressly described by Law No.131/2012.

3.1.2. Pre-inspection

Inspection Plans

With regards to *planned inspections*, the Control Body shall produce an Inspection Plan for the upcoming year. The Inspection Plan shall be prepared on the basis of risk criteria determined as per the peculiarities of inspection subject-matters, companies subject to inspection and their previous relationships with the Control Body (the date of last inspection, previous breaches). Upon the Plan de-

velopment it is required to take into account if an unannounced inspection has been already conducted at the same company; the Inspection Plan shall be cross-checked with the plans of other Control Bodies, having coordinated the joint inspections.

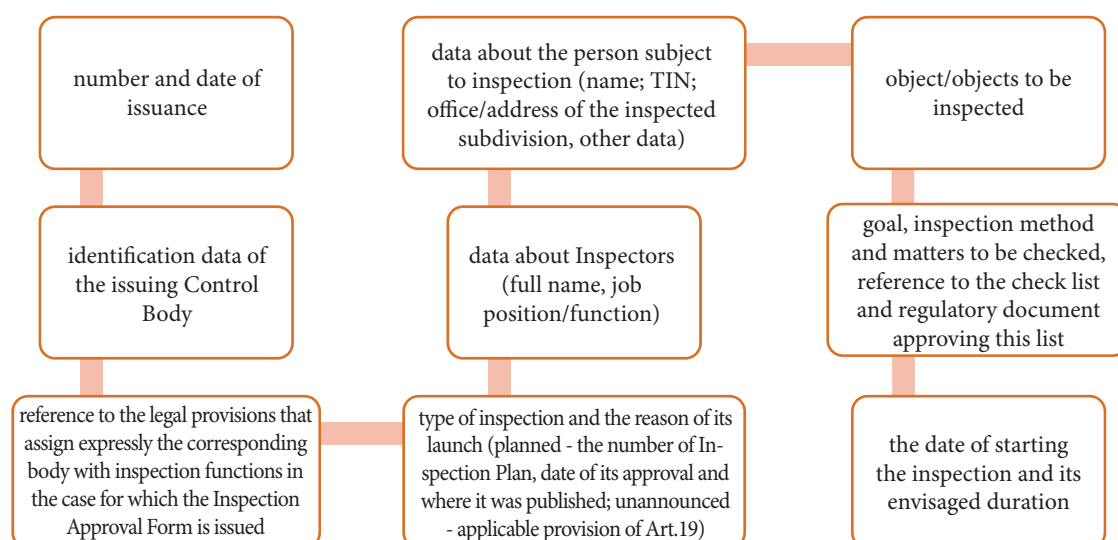
The Plan shall indicate the sequence of subjecting the companies to inspection, in a downward order of the risk score, from the highest to the lowest degree, showing the quarter when the inspection would be conducted. The Control Body shall observe the sequence set in the Plan.

Each body empowered with inspection functions shall enter its Inspection Plan into the State Register of Inspections by 01 December of the year preceding the calendar year the Inspection Plan refers to. Likewise, the Inspection Plans shall be published on the Control Body WEB page. The Control Bodies shall not be entitled to change the sequence of planned inspections after their registration and after the publication of the Inspection Plans, and/or to conduct planned inspections when such were not included in the Plan.

Inspection Approval Form

On the basis of approved and recorded Inspection Plans, the Control Body shall produce an Inspec-

Figure 1. Inspection Approval Form.



tion Approval Form. The latter shall contain the following information:

The Control Body shall send a copy of the Inspection Approval Form to the company via any means, including a copy signed using the advanced qualified electronic signature, so that there are at least five business days between the date of receiving the copy and the date of inspection commencement, but not more than 15 business days.

It is worth mentioning that a Control Body shall not be entitled to conduct more than one planned inspection at the same company during a calendar year or at the same premises of inspection when the company holds several distinct premises located separately from the headquarters and from other spaces. An exemption from this rule is the case when a higher frequency of inspections is imposed as per the inspection planning methodology based on risk criteria, applied to the scope of inspection concerned.

In case of *unannounced inspections* an Inspection Approval Form shall be produced, as well as the Note stating the reasons, on which basis the Form was issued, pursuing the goal to cut down the number of unannounced arbitrary inspections. The Note to initiate an unannounced inspection shall substantiate the need for an intervention by stating detailed circumstances and the information governing the conclusions and actions taken by the Control Body, the possible breaches resulting from the information and evidence held prior to initiating an inspection and reasonable estimation of the danger and consequences in case the Control Body does not intervene. At the beginning of the inspection, a copy of the Inspection Approval Form along with the Note stating the reasons shall be handed to the person subject to inspection, against signature.

Law No.131/2012 stipulates the reasons and conditions based on which unannounced inspections shall be conducted. Hence, the Control Body may decide to conduct unannounced inspections only when it:

I. holds information/indications, supported by evidence held by Control Bodies about degraded

situations, incidents or severe breaches of security or safety rules that may trigger an imminent and immediate danger for the environment, for the life, health and property of people, provided the conditions outlined below are met:

- the need to initiate an inspection is reasoned in advance;
- it could be reasonably identified that only an unannounced intervention through inspection could prevent and/or stop the breaches and mitigate substantially the damage already caused;

II. checks the information, which, as per the law, must be reported, provided the conditions outlined below are met:

- the information concerned was not submitted by the deadline provided by law/regulatory act;
- the body empowered with inspection functions or the body responsible for receiving the corresponding information did not receive a supporting notification from the company, which was supposed to timely report the information and/or the company in question did not respond to an announcement made by the responsible body within a reasonable timeframe;

III. checks the information derived during another inspection at a businessman the inspected company had previous economic relations with, provided the conditions outlined below are met:

- the businessman refuses to submit the information concerned;
- there is no other way to get the information concerned;
- the information in question is decisive and indispensable for attaining the goal of inspection initiated before;

IV. was requested directly by the company to be subject to inspection.

3.1.3. Inspection phase

The Inspector shall have the right to start an inspection only when the following conditions are met cumulatively:

Table 2. *The conditions to start an inspection.*

	Planned inspection	Unannounced inspection
1	presentation of ID card	presentation of ID card
2	handing a copy of the Inspection Approval Form (at least five business days before the date of starting the inspection)	handing a copy of the Inspection Approval Form with a Note stating the reasons (at the beginning of the inspection)
3	the expiry of the minimum period of five business days after sending the copy of the Inspection Approval Form	there is evidence proving there is one or several reasons to conduct unannounced inspections
4	registration of the Inspection Approval Form in the State Register of Inspections	

The inspection may be conducted only by the Inspectors specified expressly in the Inspection Approval Form without any conflict of interest as per the law⁵, and only during the work schedule of the company subject to inspection or of its subdivision.

When the aforementioned conditions (to start the inspection, to appoint the Inspectors and to set the timeframe for conducting the inspection) are not met, the company shall be entitled to prohibit any access to its premises, refuse any cooperation with the person who pretends to be an Inspector and resort to Police support to evict the person in question from the premises. At the same time, it shall notify the State Chancellery about the breaches detected.

Law No.131/2012 stipulates a derogation from the conditions for starting an inspection, namely in cases stipulated expressly by special law and if it is necessary for the selected inspection method, the Inspectors may disclose their identity and hand a copy of the Inspection Approval Form after conducting the inspection, but before producing and signing the Inspection Protocol. The possibility to hand the Inspection Approval Form afterwards is mentioned also in the Form text prior to its approval by the Management of the Control Body.

Inspection Duration

The inspection duration, regardless of its type, shall not exceed five calendar days since the date of its inception; otherwise the Inspection Approval Form becomes void. By way of exception, in case of unannounced inspections, the five-day period can be prolonged by five more days by the Management of the Control Body based on a substantiated decision that may be challenged by the company.

The planned inspection that was not started within 15 business days after sending a copy of the Inspection Approval Form and the unannounced inspection that was not started on the date stated in the Inspection Approval Form, regardless of the invoked reason, cannot be conducted subsequently, and the Inspection Approval Form becomes void.

The Law stipulates guarantees in favour of the company subject to inspection. If the period stated in the Form has not expired yet, but it becomes evident that the Inspector's possibilities to conduct the inspection have been exhausted, the inspection procedure shall be closed.

During the inspection, both Inspectors and Economic Operators shall have a series of rights and liabilities, namely:

⁵ Law No.16 of 15.02.2008.

Table 3. Rights and liabilities in the course of inspection.

Rights	
Inspector	<ol style="list-style-type: none"> 1. to enter any room used by the businessman in his/her activity (if it is the domicile, then only with the permission of the legal owner or with the police support); 2. to solicit information, certificates, licences, authorisations and other mandatory documents relevant for the object of inspection; 3. to make copies, take photos or make video records of documents or of other objects bearing information; 4. to inspect and to measure goods (to open packages, to break seals), to take samples from them, recording the information about taking samples in the Inspection Protocol; 5. to inspect transportation means (if they are the inspection subject-matter or there is information that they may contain goods which are the inspection subject-matter).
	<ol style="list-style-type: none"> 1. to verify the Inspection Approval Form and take note of the Inspector's ID card; 2. to be informed regarding his/her rights and obligations; 3. to challenge the Inspectors' actions; 4. to submit evidence and explanations in his/her favour; 5. to require attaching any documents or their copies to the inspection document, having the right to affix the signature and give written explanations, as well as to ask including in the Inspection Protocol of mentions regarding some facts or rights/obligations; 6. to solicit once, in duly justified cases, suspending or postponing the inspection for another period in case the inspection would affect its regular operation, lead to suspending the work or when due to objective reasons, he/she cannot be the subject to inspection; 7. to take note of the Inspection Protocol and of other documents produced in the course of inspection; 8. to attend personally or via his/her representative the inspection; 9. to obtain free-of-charge and authorized access to all information and documents related to the inspection conducted or to be conducted at his/her premises, including through the State Register of Inspections; 10. to write down his/her email so that the Control Body may send all notifications and information/documents related to inspection.
Inspector	<ol style="list-style-type: none"> 1. to inform the company about its rights and obligations; 2. to make available, in electronic layout or hard copy, all regulatory documents to be used in the course of inspection and underpin it; 3. to provide the support necessary for understanding the provisions of regulatory documents on which basis the inspection is conducted; 4. to assess objectively and equidistantly all the matters related to the conduct of inspection; 5. to ensure the integrity of company goods and documentation; 6. to present the ID card and allow the Economic Operator to take note of it; 7. to disclose no information about the content of documents and data of which knowledge was acquired in the course of inspection, except for the case of collaboration with other Control Bodies; 8. to attach to the Inspection Protocol any documents or copies of them and written explanations provided by the company and/or by its employees; 9. to produce the Inspection Protocol and hand in a copy of it; 10. to require and consider no documents and information that are not related to his/her competence and are not relevant for the inspection subject-matter; 11. to perform no checks of matters that, as per the law, are the inspection subject-matter of other Control Bodies or are not indicated in the Protocol and in the Inspection Approval Form; 12. to conduct, in case of unannounced inspection, no inspections in the absence of company representatives, if there are reasons to consider that their absence is unjustified; 13. to solicit no resources (premises, transportation, computers, Xerox machines, consumables, etc.) and use them without the person's consent; 14. to seize no goods, equipment, documents, data storage devices, computers or other objects bearing information; 15. to solicit no information that the company provided previously to the Control Body and no data that are not related to the inspection subject-matter; 16. to apply no restrictive measures and/or administrative penalties for the breaches detected in the course of inspection, which was conducted with the breach of the limits stated by law.
	<ol style="list-style-type: none"> 1. to submit documents and information directly related to the inspection subject-matter, requested by the Inspectors to conduct the inspection; 2. to grant access to Inspectors to its offices during the work schedule; 3. to ensure, upon the initiation of inspection and throughout the inspection the presence of Management or its representative; 4. to cooperate with the Inspector and contribute to the exercise of his/her rights; 5. to refuse cooperation within the limit and to the extent possible when the Inspector's request conflicts with the confidentiality obligation of the person subject to inspection.
Liabilities	

3.1.4. Post-inspection Phase

Inspection Protocol

The inspection procedure shall end with an Inspection Protocol prepared in duplicate that shall be numbered and signed on each page by all Inspectors who conducted the inspection and by the company subject to inspection. A copy of the Inspection Protocol shall be handed to the company, inserting a mention in this regard on the second copy, confirmed by the signature of the person who received it. The second copy of the Inspection Protocol shall be submitted to the Management of the Control Body for consideration and approval of the decision.

The Inspection Protocol shall comprise a facts-finding part, a prescriptive part and a penalising part. It shall include all information regarding the inspection carried out, the procedures applied and the findings, prescriptions and recommendations formulated on the basis of findings, the restrictive measures applied and the penalties set out as a result of inspection.

Within ten business days after signing the Inspection Protocol, the company shall have the right to submit its disagreement with the Protocol, bringing in additional evidence to confirm its position.

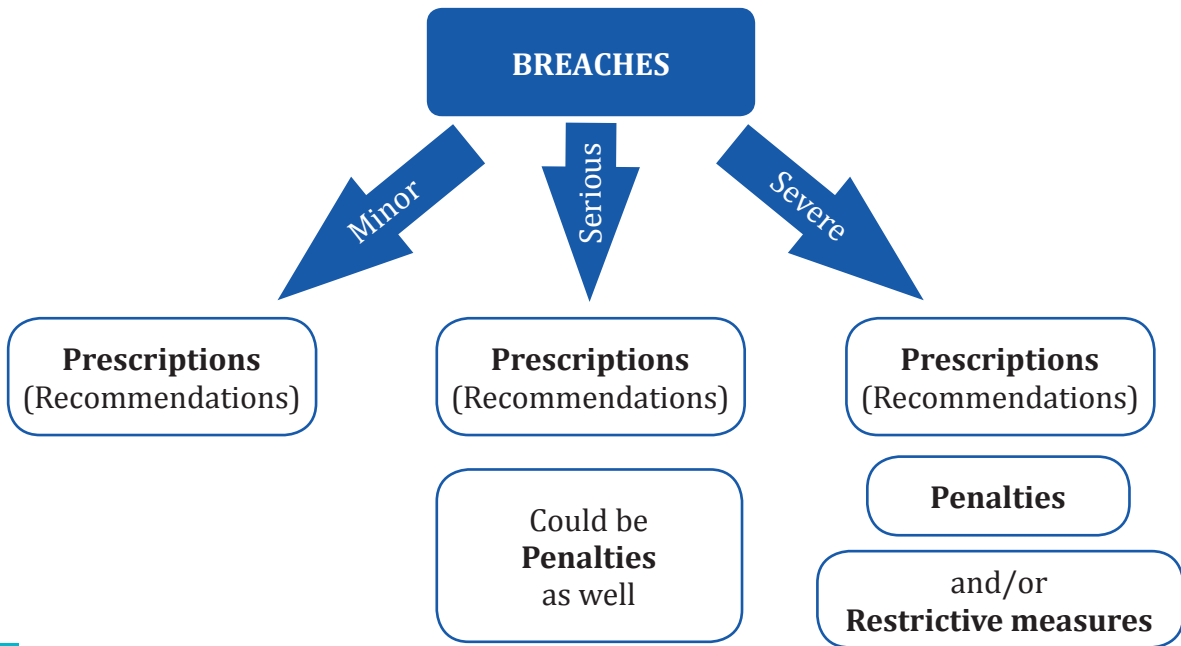
The Inspector shall review the submitted materials and, where appropriate, produce an additional Inspection Protocol, without making any rectifications in the main document. The right to submit a disagreement shall neither affect nor limit the possibility to challenge the Inspection Protocol in the manner provided by law. The Inspection Protocol shall enter into force on the date of its communication to the company in question provided it has not been challenged.

If the Inspection Protocol ascertains a breach, it shall replace the Protocol identifying the breach, having similar legal regime and force. If the detected breaches contain indications of an offence, criminal proceedings shall be filed and sent to prosecution, having attached mandatorily all the materials related to the inspection concerned.

Prescription

If breaches of legislation were detected in the course of inspection, but they are not offences, the Control Body shall include a prescription in the Inspection Protocol aimed at remedying the breaches. The law stipulates and defines three levels of legal breaches: minor, serious and severe. Depending on the breach level, prescriptions (recommendations) may be issued, as well as additional penalties and/or restrictive measures.

Figure 2. Levels of Breaches.



The company shall be required to remove the breaches stated expressly in the prescription within the prescribed deadline. The Control Body shall be required to set the deadline for fulfilling the prescription, taking into account the complexity of actions to be undertaken, the level of threats caused by the breaches, which shall be removed, the company possibilities to undertake the prescribed actions, as well as the previous prescriptions issued in similar cases.

If the company fails to remove the breaches of legislation within the prescribed deadline, the Control Body that issued the prescription, depending on the identified level of threats, may issue another prescription, with or without restrictive measures, and/or may impose penalties provided by law. If the Inspector ascertained that the breaches were removed, the penalties imposed on the company as per the law may be lifted in full or in part.

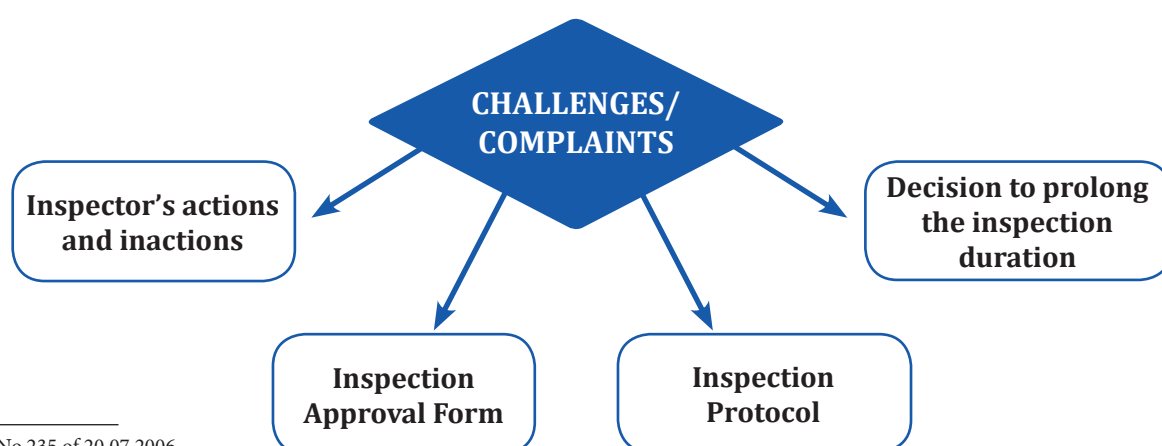
By restrictive measures it is meant actions and/or inactions imposed by the Control Body with the aim to remove or mitigate an imminent and immediate danger for the environment, life, health and wealth of people, identified in the course of inspection. Depending on the provisions of special laws, these measures shall be prescribed to the company as restrictions imposed on certain activities; on using or making available certain goods to consumers or as imposed actions, and can be identified as corrective measures, coercive measures or procedural restraining measures.

The restrictive measures can be imposed for a limited period stated expressly by the Control Body in the prescription. These measures shall expire once the prescription was fulfilled, i.e. the indicated breaches were removed, or on the date of suspending and/or repealing the prescription by the issuing body, hierarchically superior body or by courts. Suspending or withdrawing a permissive document and/or a licence may be prescribed through a restrictive measure. In such cases, the Control Body shall be required to address, within three business days, to a competent court to validate the prescription of suspending and/or withdrawing the permissive document and/or in compliance with the procedure established by the legislation⁶.

Challenges/ Appeals/Complaints

Law No.131/2012 provides the company with the possibility to challenge/appeal any document, action and inaction of the Control Body. If the company considers that one of its rights recognized by law was affected by the Inspection Approval Form, the decision to prolong the duration of inspection or by the Inspection Protocol, or by inspector's actions or inactions, it shall be entitled to challenge them, in full or in part, by having lodged to this end a written preliminary request to the Control Body. Exception is made for the Inspection Protocol containing an alleged administrative offence, which can be challenged as per the procedures laid down by the Contravention Code⁷. Likewise, the Economic

Figure 3. Challenges/ Appeals/ Complaints



⁶ Law No.235 of 20.07.2006.

⁷ Code No.218 of 24.10.2008.

Operator shall have the possibility to challenge, in written form, the actions and inactions of Inspectors to the Management of the Control Body.

Regarding the inspection documents that contain no prescriptions or restrictive measures, the preliminary request to challenge the actions/inactions of Inspectors shall be lodged within 30 days from the date when the company got or should have got acquainted with those documents. For the Inspection Protocol containing a restrictive measure to suspend the Economic Operator activity, the preliminary request to challenge that measure shall be lodged within the prescribed deadline for enforcing the restrictive measure in question.

According to the general rule, the Control Body shall consider the preliminary request and issue a decision within ten business days from the date of request submission. If the prescription or restrictive measure is challenged, the request shall be considered and the decision shall be issued within the deadline prescribed in the Inspection Protocol for enforcing the prescription or restrictive measure, without exceeding ten business days from the date the request was submitted. The preliminary request challenging the restrictive measure to suspend the Economic Operator activity shall be considered and the decision shall be issued within five business days from the date the request was submitted.

Petitions and preliminary requests to challenge the Inspector's actions/inactions lodged by Economic Operators shall be considered as per the preliminary procedure covered by the administrative law *only under the Dispute Resolution Councils working within the Control Body*. These councils shall comprise, mandatorily, at least three representatives of business associations (relevant for the scope of inspection or matters challenged), heads of the main subdivisions of the Control Body and a representative of the field-related Central Public Authority. The decision with respect to the outcomes following the consideration of the preliminary request may be appealed in administrative court within the terms and conditions stipulated by the legislation⁸.

⁸ Law No.793 of 10.02.2000.

The obligation to establish Dispute Resolution Councils within the Control Bodies evolved back in 2016⁹. Nonetheless, Law No.131/2012 failed to provide clear and detailed rules to govern the procedure for setting and operating such councils. The situation was remedied in 2017¹⁰, while in early 2018¹¹ the Government approved the framework Regulation on setting and operating the Dispute Resolution Council within the Control Bodies. The latter shall establish Dispute Resolution Councils within three months following the publication of the framework Regulation, having issued to this end written orders of the Control Body leadership. Also, they have to determine their composition, approve Regulations on organising and operating Dispute Resolution Councils. Likewise, the Control Bodies shall develop technical options on their websites to enable online submission of preliminary petitions and requests and to get online confirmation of their receipt.

At present, the Control Bodies are developing and approving their own Regulations on organising and operating Dispute Resolution Councils. The State Tax Service has already approved such a Regulation¹².

The selection of Dispute Resolution Council members amongst the Business Associations is an important issue. In order to designate Council members, the Business Associations shall meet the following requirements: a) be registered in compliance with the legislation; b) comprise members carrying out activities that relate to the Control Body area of competence; c) work in that business area for at least two years; d) demonstrate high level of representativeness in the industry. The State Chancellery shall ensure the selection of Council members. It also shall develop and maintain an up-to-date list of Business Associations and publish that information on: controale.gov.md. The Business Associations may designate their representatives in the Dispute Resolution Councils by

⁹ Law No. 230 of 23.09.2016.

¹⁰ Law No. 295 of 21.12.2017.

¹¹ Government Decision No. 380 of 25.04.2018.

¹² State Tax Service Written Order No. 327 of 14.06.2018.

notifying the State Chancellery to this end. The representatives may opt to be part of several Dispute Resolution Councils established by different Control Bodies. Should several Business Associations opt for a single Council, the online voting option shall be posted on controale.gov.md to ensure the selection of three associations only. The State Chancellery shall validate the results of business environment representative selection in the Dispute Resolution Councils for each Control Body as per the options submitted by Business Associations and the results of online voting if several solicitors were in place. Each Control Body shall be provided by the State Chancellery with the list of Business Associations selected to be included in the composition of the corresponding Councils. The mandate of Dispute Resolution Council members representing the business environment shall last three years. Upon the mandate expiry a new selection process shall be initiated.

Law 131/2012 stipulates that the National Council for Dispute Resolution in the area of State Inspection will be established. It will consider the systemic flawed practices in the area of state inspection, which have been detected and submitted by the Dispute Resolution Councils under Control Bodies for consideration. The operation of this National Council shall be ensured by the State Chancellery. According to the legislation, the National Council members are heads of Control Bodies, representatives of Business Associations, elected on the basis of parity principles, and the State Chancellery Leader who shall preside at Council meetings. It is worth mentioning that the Law failed to provide for clear and detailed procedure aimed at organising and operating this National Council. At the same time, there is no subordinated regulatory document to govern such procedures. So far, no National Council for Dispute Resolution in the area of State Inspection has been established and operated yet.

According to the Law, the Control Body and/or its public official shall bear, as appropriate, civil, administrative or criminal liability for having breached the provisions of Law No.131/2012. In

order to make the inspectors accountable and, implicitly, mitigate the abuses committed by them, Art. 350² of the Contravention Code stipulates that any breaches of the legislation on state inspection on business activity committed by inspectors shall constitute a contravention (in force as of 16 March 2017). Any inspection initiated, conducted and completed with the infringement of the deadlines and requirements laid down by the aforementioned Law shall be considered as disciplinary deviations and penalised accordingly in compliance with the legislation¹³. In addition, any prejudice caused to the company by the Control Body and its employees while conducting inspections, i.e. by hindering its regular operation and/or by suspending in full or temporarily its operation, shall be remedied at the expense of the Control Body. If the conflict has not been addressed amiable, the damaged company may appeal the Control Body and/or its employees in court.

3.1.5. Inspection process for the State Labour Inspectorate, the National Agency for Food Safety and for the State Tax Service

According to the interview outcomes, the business people highlighted three Control Bodies that most frequently conducted inspections during the reference period and committed most breaches in the course of inspection, namely the State Tax Service, the State Labour Inspectorate and the National Agency for Food Safety. Further we shall review the legal framework provisions governing the inspections carried out by those three entities and the differences relative to inspections performed by other Control Bodies.

State Tax Service

With respect to the State Tax Service, based on Law No.131/2012, it has only the obligation to register the inspections in the State Register of Inspections,

¹³ Law No.158 of 4.07.2008.

monitor and report them. All specific procedures, methods and operations used to organise and conduct tax inspections are described by the Tax Code and by in-house guidelines of the State Tax Service.

The Tax Code contains few provisions that are similar to the ones comprised by Law No.131/2012, while tax inspection procedures are specific and differ from the ones stipulated by the general law on inspections. Further we would mention some important rules of the Tax Code governing the tax inspections.

A tax inspection pursues the goal to check how a taxpayer complies with the Tax Legislation during a certain period or during several fiscal periods. A tax inspection is conducted by the State Tax Service and/or by another body assigned with fiscal administration tasks, within the limits of their competence, in situ and/or in their office.

In case of a tax inspection, the decision to initiate it is equivalent to the Inspection Approval Form covered by Law No.131/2012, while the Tax Inspection Protocol is equivalent to the Inspection Protocol covered by the same Law.

The decision to initiate a tax inspection, the Inspection Approval Form, the tax inspection document and the decision regarding the case of breaching the fiscal regulations can be registered on-line in the State Register of Inspections, through the interconnection of the STS IT system with the State Register of Inspections.

The tax inspection can be conducted in situ and/or at the competent body office, organized and performed through the following methods and operations: factual verification, documentary verification, overall verification, partial verification, thematic verification, operative verification, and cross-check verification.

The State Tax Service has the obligation to plan its annual inspections in coordination with the Customs Service and to exchange information with it to this end. In case of identifying coincidences regarding a company subject to inspection, joint

inspections must be carried out.

The tax inspections shall be carried out during the work schedule of the body conducting them and/or during the work schedule of the taxpayer. Depending on the type of tax inspections and case circumstances, the inspection may last two months, three months and more. At the same time, it may be prolonged even with three more months.

The State Tax Service applies penalties to companies that breached the tax regulations. The breaches could be insignificant or significant. Such penalties as warnings or fines could be applied for a tax infringement. They shall be stated in the decision issued by the State Tax Service following the consideration of the tax breach case.

The State Tax Service or other empowered body may apply late-payment addition (penalty) for taxes and fees, may suspend the operations on bank accounts, seize goods and apply other measures necessary to ensure the repayment of tax liabilities.

The State Tax Service decision or the Tax Official action may be challenged only by the company concerned/its representative affected by the decision or against which the action was performed. The claim shall be submitted within 30 days after the date the challenged decision was approved or the challenged action was undertaken. The claim shall be considered by the State Tax Service within 30 calendar days, with the possibility to prolong the timeframe for claim consideration with 30 more days. In case of a disagreement with the State Tax Service decision regarding the claim, the taxpayer shall be entitled to resort to the competent court. Challenging the State Tax Service decision does not suspend the execution of the challenged decision unless the legislation provides otherwise.

As of 12.01.2018, the new Tax Code provisions entered into effect, which refer to the handling of appeals under the Dispute Resolution Council, comprising as members at least three representatives of the business environment associations with relevance in the tax area.

State Labour Inspectorate

As for the State Labour Inspectorate, the state inspection regarding compliance with legal documents and with other regulatory documents in the area of employment relationships, exercised over people involved in business activity, shall be planned, conducted and registered in compliance with the provisions of Law No.131/2012 on State Inspection on Business Activity.

It is worth mentioning that as a result of making several amendments to the legal framework governing the activity of Control Bodies¹⁴, the State Labour Inspectorate does not hold anymore the competence to conduct state inspections on compliance with the legislation in the area of occupational safety and health. This task has been assigned to other competent authorities in the area of occupational safety and health (including the National Agency for Food Safety). The State Labour Inspectorate has got the task to monitor those inspections, to keep updated records on occupational safety and health inspections conducted by the authorities competent in this field of activity on the basis of reports submitted by those authorities.

Law No.131/2012 stipulates an exemption from general requirements set for the State Labour Inspectorate, namely it does not apply the provisions on sending the Inspection Approval Form at least five business days before the beginning of the inspection. Pursuant to the basic law governing the State Labour Inspectorate activity, a Labour Inspector empowered to perform state inspections in the area of employment relationships, upon presenting his/her ID card, shall be entitled to enter freely the offices, work places and production premises at any time of day and night without informing the employer in advance¹⁵. When conducting such state inspections, an Inspection Approval Form is produced without being sent in advance to the Economic Operator subject to inspection.

The Law on State Labour Inspectorate contains many rules governing the process of state inspections. Some of those rules contain components that are not comprised by Law No.131/2012. Hence, it is mentioned that the duration of an inspection shall not exceed three business days, which may be prolonged, where necessary, by the State Labour Inspectorate Director or his/her Deputies. The Inspection Protocol shall be signed by the Labour Inspector who produced it, by the Employer (person who acts on his/her behalf) and by the representative of Trade Union or by the representative of unit employees.

National Agency for Food Safety

The National Agency for Food Safety (ANSA) inspection activity is planned, conducted and recorded as per the requirements referred to in Law No.131/2012 on State Inspection on Business Activity. By way of derogation from general rules, ANSA does not apply the provisions on sending the Inspection Approval Form at least five business days before the beginning of the inspection when it:

- conducts an inspection based on Law No.50/2013 on official inspections to check compliance with the legislation on animal feed and food and with the rules on animal health and well-being¹⁶;
- conducts an inspection to check compliance with the legislation on occupational safety.

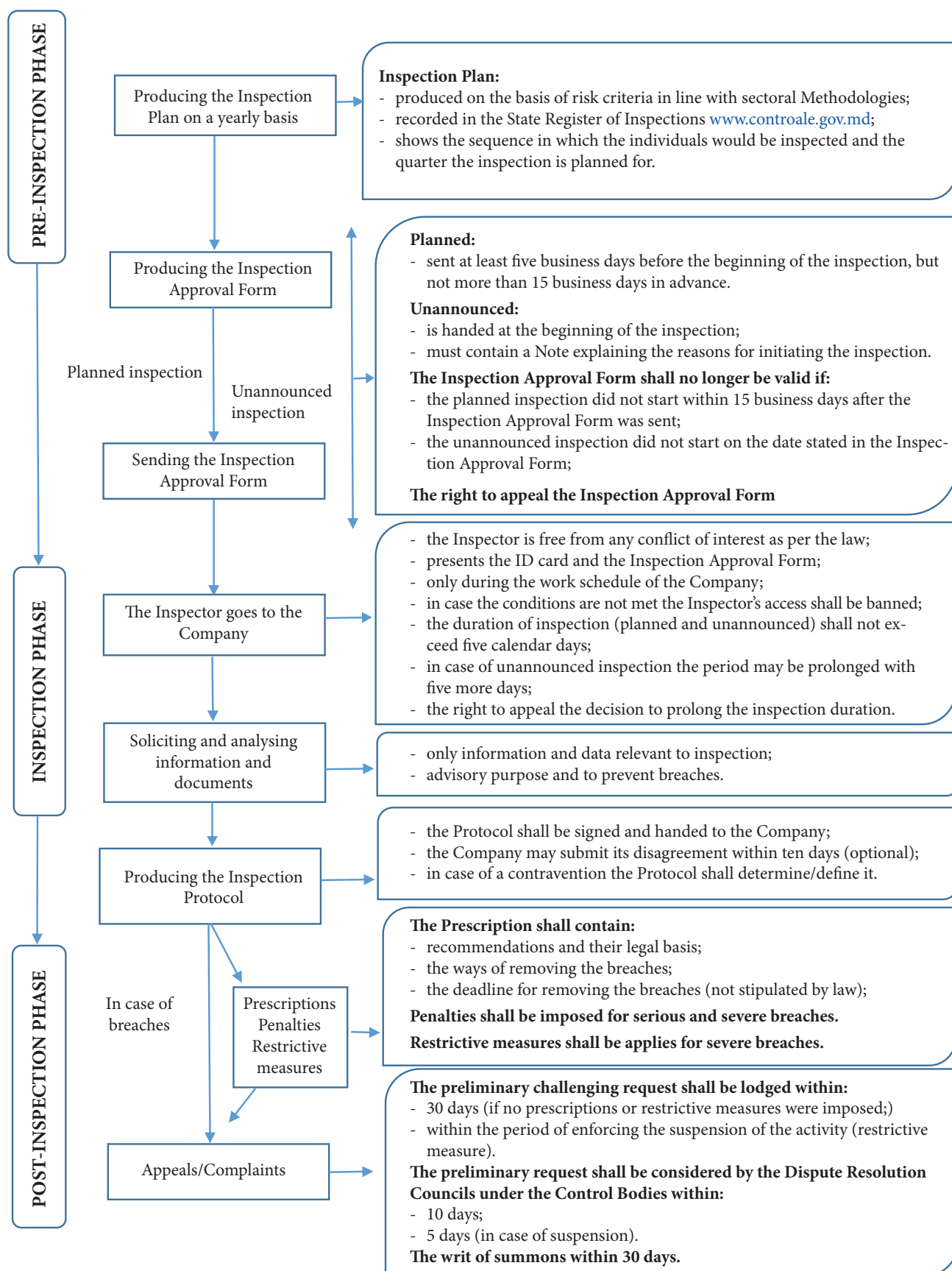
As it is about preventing, removing and mitigating the risks for human and animal health, protecting the consumers' interests, the inspections based on Law No.50/2013 shall be conducted without prior notification. Likewise, as it concerns occupational security and safety, such inspections shall start without prior notification of the Economic Operator.

¹⁴ Law No.185 of 21.09.2017.

¹⁵ Law No.140 of 10.05.2001.

¹⁶ Law No.50 of 28.03.2013.

State inspections in compliance with the provisions of Law No.131/2012



3.2. State inspection in practice

3.2.1. Practical experience of Moldovan companies in the area of state inspection

Almost 80% of the interviewed companies confirmed they were subject to inspections during the reference period. Hence, 45% of them were subject to 1-2 inspections, while 1/3 of companies, which stated they were subject to inspections, claimed they had more than ten inspections over that period, which is particularly worrisome.

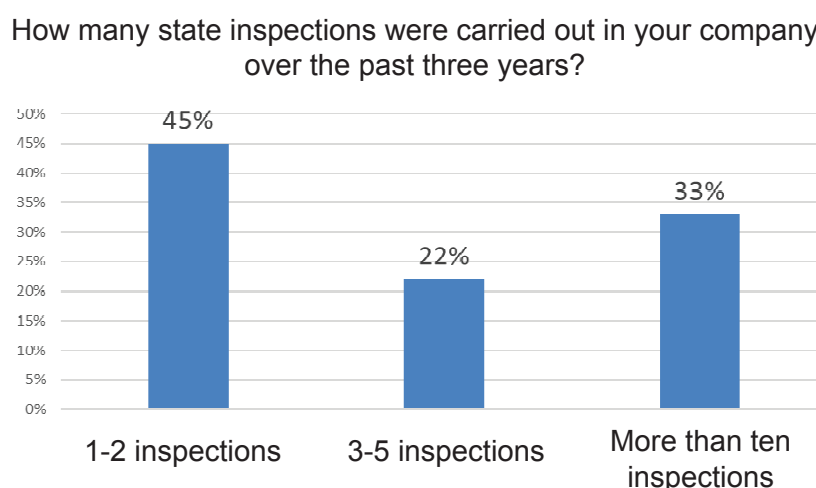


Figure 1. The number of inspections the Moldovan companies were subject to during 2016 - 2018.

As per the replies to the Questionnaire, there is a significant number of unannounced inspections conducted at Economic Operators. Only 15% of companies claimed they were not subject to unannounced inspections during the reference period. Most companies were subject to 1-2 unannounced inspections. At the same time, circa 20% of companies claimed they were subject to more than five unannounced inspections. From the start, this type of inspections is considered to be “risky” for the business environment, as they are initiated based on a petition (submitted by competitors or by unfair people), are not substantiated in many cases and do not require prior notification of Economic Operators.

Based on the responses provided by the companies, the State Tax Service and the State Labour Inspectorate are the entities that dominate detachedly the ranking in terms of the number of inspections carried out at Economic Operators. The top three

Control Bodies include also the National Agency for Food Safety. More than 75% of all inspections carried out during the considered timeframe at the Economic Operators, which filled in the Questionnaire, were covered by those three entities.

According to the Survey results conducted by IDIS “Viitorul” in 2017¹⁷, the State Tax Service and the National Agency for Food Safety are also the entities least trusted by the business environment. According to the Survey, 45,7% of Economic Operators have confidence in the State Tax Service and only 41% – in the National Agency for Food Safety. At the same time, the Survey results revealed that 18,2% of business people consider that the State Tax Service inspectors receive frequently unofficial payments.

¹⁷ Study “Combating corruption in Moldova: what can business do?” and National Survey “Assessing the perceptions and personal experiences of economic operators in terms of corruption in Government structures of the Republic of Moldova”, <http://www.viitorul.org/files/library/Raport%20Coruptie%20Biz%20rom.pdf>

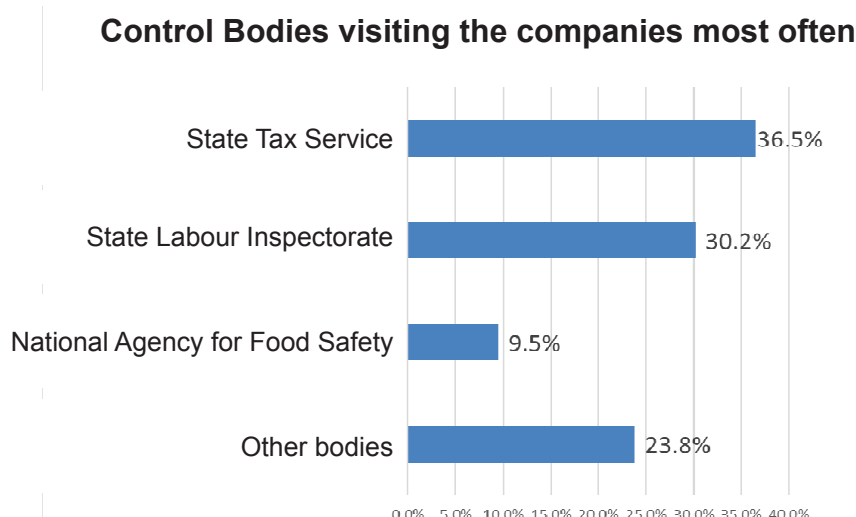


Figure 2. Control bodies that conducted most visits to Moldovan Economic Operators during the considered period.

Pre-inspection

Sending the Inspection Approval Form

More than half of the interviewed undertakings declare that the Inspectors notify them on the upcoming inspection on the same day or, at most, one day in advance. However, some enterprises claim that in some less frequent cases they were notified five days or even ten and more days in advance.

Notifying the company on the same day is valid for unannounced inspections, while notifying it 5-15 days in advance is done for planned inspections. In most cases, these requirements were observed. Concerns are raised by the case of notification one day before the inspection (three respondent companies) and 30 days ahead the inspection (one respondent). This could happen only in case of planned inspections, the breach of legal requirements being obvious. In fact, conducting the inspection in one day after sending the Inspection

Approval Form did not meet the minimum five-day period, while the inspection could be no longer performed in 30 days after notification.

Pursuant to the provisions of Law No.131/2012, the inspection outcomes and the penalties applied on their basis are considered to be invalid if the inspection was carried out by the Control Body and/or by its employees in breach of the provisions of Law No.131/2012. Moreover, any damage may be recovered, including the moral or image-related damage caused to the Economic Operator as a result of conducting an inspection, which outcomes and/or penalties were declared null and void. In reality, based on the conducted interviews, nobody mentioned a case of declaring the inspection outcomes and the penalties applied null and void; also, there was no example of court judgement by which to recover the damage caused to the Economic Operator in the aforementioned situations.

Inspection Plans

During the period of 2016 – 2018 covered by the answers of Economic Operators to the questions comprised by the Questionnaire, not all inspection plans of bodies empowered with inspection functions were entered in the State Register of Inspections (AIS SRI). The State Chancellery Report¹⁸ mentions that in 2016 26,5% of state inspections were entered in the AIS SRI. At the same time, the average number of entries in the AIS SRI per institution was 60% in 2016. Based on the analysis of WEB Portal www.controale.gov.md, one can notice that 21 Control Bodies published their inspection schedules in 2016, 23 Control Bodies – in 2017, while in 2018 (by the time of producing this Report) only eight Control Bodies published their inspection schedules.

The State Chancellery found that in 2016 some institutions, subjects of Law No.131/2012, made no entries in the AIS SRI, although they conducted inspections as per the mentioned Law during the year in question. The National Agency for Food Safety was also part of those bodies empowered with inspection functions, although it showed a significant increase in the number of inspections conducted in 2016 (QIV of 2016, after the end of

the Moratorium). The Portal www.controale.gov.md contains information on inspection plans of ANSA for QI and QII of 2017 and several plans for 2018. Out of those three Control Bodies mentioned most frequently by the respondent companies, the State Labour Inspectorate entered most of the inspection plans in the AIS SRI. As for the State Tax Service, the online Register contains more information regarding the inspection plans for QIV 2016 and for 2017 and 2018 as well.

According to the Questionnaire outcomes, circa 90% of companies claimed the activity of Control Bodies did not overlap with other inspections. In the remaining cases, when an inspection overlapping occurred, the companies mentioned the State Tax Service and the State Labour Inspectorate. To avoid the overlapping of planned inspections it is necessary to have better planning in place, ensure preliminary coordination of inspection plans with other Control Bodies. The State Chancellery plays an important role in this respect as it may ascertain the overlaps and duplications, following a preliminary screening of plans, being entitled to recommend the respective Control Bodies to coordinate their actions and consider the opportunity to conduct joint inspections.

Inspection phase

Inspection Duration

In 60% of the cases, a company inspection lasted one day. In 30% of the cases the inspection lasted 2-5 days. In other 10% of the cases, in so far as unannounced inspection is concerned, it lasted 10-20 days. Only 10% of respondents confirmed that the unannounced inspection was prolonged with five more days. In most cases when the inspection was prolonged, the State Tax Service was involved more frequently and the State Labour Inspectorate less frequently.

Based on Economic Operators' responses, it was found that 1/3 of inspections lasted several days in a row, including the maximum period set by the legislation, with no need for that. At the same time, there were cases of deadline extension for unannounced inspections when there was no need or substantiated reasons in place. The situations mentioned by companies regarding the inspections conducted for more than ten days set by Law No.131/2012 are worrisome. In case of deadline extension by the State Tax Service we talk about the conceptual issue of exempting the inspections conducted by this body from the requirements of Law No.131/2012. In case of inspections carried

¹⁸ The State Chancellery Report on the activity carried out by the State Inspection Monitoring Service in 2016.

out by the State Labour Inspectorate, which lasted more than ten days, this is already a breach of Law provisions and, by consequence, such inspections should have been declared null and void. The business people did not mention any examples from their practice when such inspections were declared null and void. Not the least we shall note that an inspection lasting more time represents a means of putting pressure on the Economic Operator, being a risk factor for an “*imputo*” corruption to occur. According to the business people, a long-lasting inspection affects the regular operation of the company, causing economic losses.

Soliciting information and documents

During the interviews, 15% of companies claimed they received requests regarding documents on matters beyond the Inspectors’ competence, mostly from the State Tax Service and the State Labour Inspectorate. The requested documents included, *inter alia*, contracts with economic partners, personal information and data, information referring to commercial secrecy, documents that were not included in the list for VAT reimbursement, written orders, company in-house regulations, guidelines, etc.

In the course of inspection, the Inspector shall have the right to solicit any information and document necessary to check whether the Economic Operator actions are compliant with the legislation provisions. Based on the statements made by the business people, at this phase the Inspector commits abuses and solicits documents that are not related to the subject-matter of the inspection. This fact may occur when the Inspector is searching for additional “reasons” to prove that the Economic Operator committed infringements and to have substantive “argumentsc” in “negotiating” the reward/carrot for not punishing the individual subject to inspection. Likewise, requesting information and documents irrelevant for the inspection, representing commercial secrecy, contracts with partners, personal data, could mean the Inspector has an interest or acts upon the initiative and in the favour of economic competitors.

Disruption of company activity

In 20% of the cases Economic Operators claim the conducted inspection affected their activity 2-3 times during the past three years.

Although the Law prohibits the Control Bodies and their employees to impede the regular operation of the individual subject to inspection during the inspection, in reality one can see that such situations do occur. The activity of interviewed Economic Operators was affected by multiple unannounced inspections, by their duration and prolongation, by the duplication and overlapping of inspections carried out by different entities, by requesting a large volume of information and documents, including those that were not related to the inspection subject-matter, etc. As a rule, even when their business activity was affected, companies did not resort to courts to claim remedies for the damage caused by Control Bodies.

Professional conduct and qualification of Inspectors

Few companies mention the Inspectors’ integrity, although the Economic Operators point out some improvements in terms of Inspectors’ professional conduct and qualification.

Inspectors’ qualification shall be considered also in the light of the on-going public administration reform, covering also the Control Bodies. These reforms pursue the goal to optimize/streamline the number of authorities, institutions and public agencies, but affect also the personnel. From the one side, the number of civil servants is being reduced, while from the other side, the focus is placed on their professionalization and motivation. The fact that the reform outcomes may last in time should be also taken into account. All Economic Operators would like to have qualified Inspectors with proper professional conduct.

“The attitude and cultural level of Inspectors shall be changed”, an economic operator, participant in the NBA Study, pointed out.

Professional conduct and qualification of Inspectors who visited the company with inspection purposes

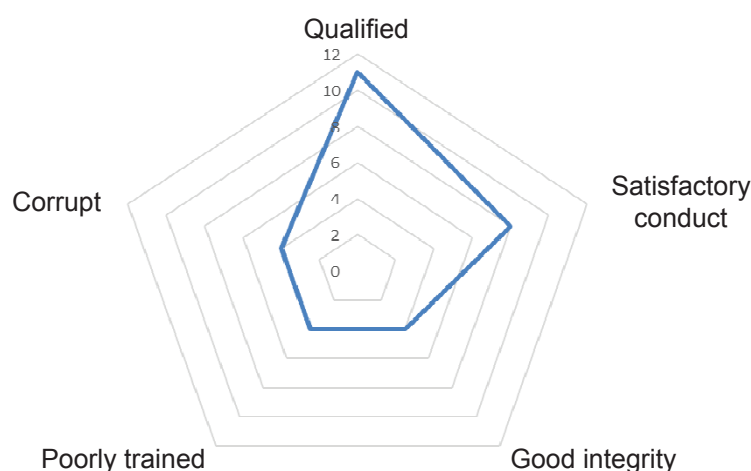


Figure 3. Inspectors' professional conduct and qualification.

Post-inspection phase

Penalties and prescriptions

Almost 40% of companies claimed they were subject to penalties during the reference period, while other 20% mentioned they received prescriptions. Half of the companies subject to penalties said there was just one penalty, while the other half stated they were subject to 2-3 penalties. As for the number of prescriptions, up to two prescriptions were applied in more than half of the cases, and 5-10 prescriptions or even more were applied in more than 45% of the cases. As a rule, the Control Body sets a 10- to 30-day period for the company to remedy the shortcomings identified in the prescription.

The large number of penalties corroborate the outcomes of the Survey conducted by IDIS "Viitorul" in 2017, according to which the current system of state inspections is focused mainly on punitive measures, imposing penalties under any circumstances: "when an Inspector has come, he/she has to write something; even if everything is OK, he/

she has to write something". Contrary to the principle of presumption of innocence, the business is regarded/treated as an offender, even when it committed unintended breaches, which caused no material damage and which could be addressed by the Economic Operator.

We shall also highlight the narrow period, i.e. 10-30 days allowed to remedy the gaps, as a company needs time to undertake certain actions, depending on the specific situation. Currently, the Law does not stipulate a fixed period or a minimum and maximum period, which, in fact, leaves this matter at the discretion of the Control Body to set a deadline that fits its own belief, which sometimes is subjective. This discretionary power makes room for abuses or even for corruption.

"The fine shall be imposed if one was warned, but not from the very beginning, as it is done in our country", an economic operator, participant in the NBA Study, pointed out.

The punitive approach of inspection in practice contravenes the advisory principle of inspection, expressly laid down by Law No.131/2012, as well as the requirement to conduct the inspection as an ultimate measure after having exhausted all other possibilities.

*“What shall be changed in terms of state inspections is to suggest the methods aimed at removing the detected irregularities”
an economic operator, participant in the NBA Study, pointed out.*

The NBA Members recommend improving the regulatory framework by inserting a rule according to which the first inspection visit conducted by the public authorities should be an informative one, not resulting in imposing penalties or restrictive measures, but granting time to the Economic Operator to remedy the problems. The control authorities shall have the obligation to warn under certain conditions and for certain deeds, having produced a remediation plan containing measures and deadlines for the Economic Operator. After the expiry of the deadline, the authorities shall resume the inspection and check whether the plan of measures has been fulfilled. The goal is to have some tools in place that prevent committing breaches, inform and advise the Economic Operator, granting the possibility to correct the minor deviations and an appropriate timeframe to remove the shortcomings.

Challenging the Inspection Protocol

Only 15% of companies mentioned they challenged the Inspection Protocol issued by the Control Body, which carried out the inspection. Hence, in half of the cases the original Inspection Protocol was retained, while in the remaining cases the Protocol was amended or repealed in part. When penalties are imposed, the Economic Operators claim it is useless to challenge the Protocol.

As for the prescriptions, most Operators say they did not challenge the Protocol because they agreed with the prescriptions, and the latter were in line with the legislation.

Several factors are behind the small number of companies that challenge the Inspection Protocol. If a company works with breaches, and the Inspection Document has been properly produced, the Economic Operators prefer to “resolve” the case unofficially rather than to challenge it legally. If the Inspection Document and its findings are groundless, the Economic Operators would prefer not to fight legally and prove the unlawfulness of the document, considering more appropriate and less costly (money, time, personnel) to resort to unofficial means for case “resolution” or to pay the penalties officially and continue their activity. As a rule, the Control Body does not repeal its own Inspection Document when it is challenged. At the same time, the company does not resort to court as it has no confidence in justice. This state of affairs is confirmed by the latest surveys, according to which more than 80% of citizens do not trust the Judicial of the Republic of Moldova, while 76% consider the judges as corrupt¹⁹.

Some of the interviewed Economic Operators fought till the end, and half of them managed to obtain the Inspection Document to be amended or to be repealed in part, but none of them managed to get the Inspection Document repealed in full. Half of those “brave” people did not obtain any result as the Inspection Document was retained by courts. The conditions to fight are as follows: to work legally, to acknowledge you are right and to have a combative spirit.

We should note that there was no case for a company to challenge an Inspection Approval Form, and none of the companies mentioned they challenged the decision to prolong the unannounced inspection due to the reasons mentioned above.

¹⁹ www.jurnal.md, only one out of five Moldovans has confidence in justice, while 76% consider that the judges are corrupt // SURVEY conducted by Magenta Consulting, presented on 7 February 2018.

Payments to avoid penalties

According to the business people, in circa 20% of the cases when following the conducted inspection certain irregularities were detected within the company, money or gifts were solicited to “address” the situation. In most cases the State Tax Service and the State Labour Inspectorate were involved. The Customs Service and the National Agency for Food Safety were also mentioned in this regard but less often. As a rule, the solicited amounts varied between 15 to 20% of the fine/penalty to be paid.

Economic Operators mention the following reasons leading to situations when payments are settled to avoid penalties:

First of all, as per the Business opinion, the legal framework that governs the business activity contains many obscure provisions, sometimes they contradict the provisions of other regulatory documents, and such fact makes the provisions interpretable at the discretion of Inspectors, leaving room for abuses in the Inspection Document. In-

appropriate and impossible to observe legal rules, frequent amendments made to the legislation are the main pillars that make the Economic Operators vulnerable and easy victims of corrupt officials.

Second of all, when being asked to pay money, including the situation when they are right, in most cases the Economic Operators prefer to pay and not to talk about that, as they know they would interact with the Inspector in the future. According to the Business, “friendships” are established via “voluntary” payments, and such facts may be helpful in the future.

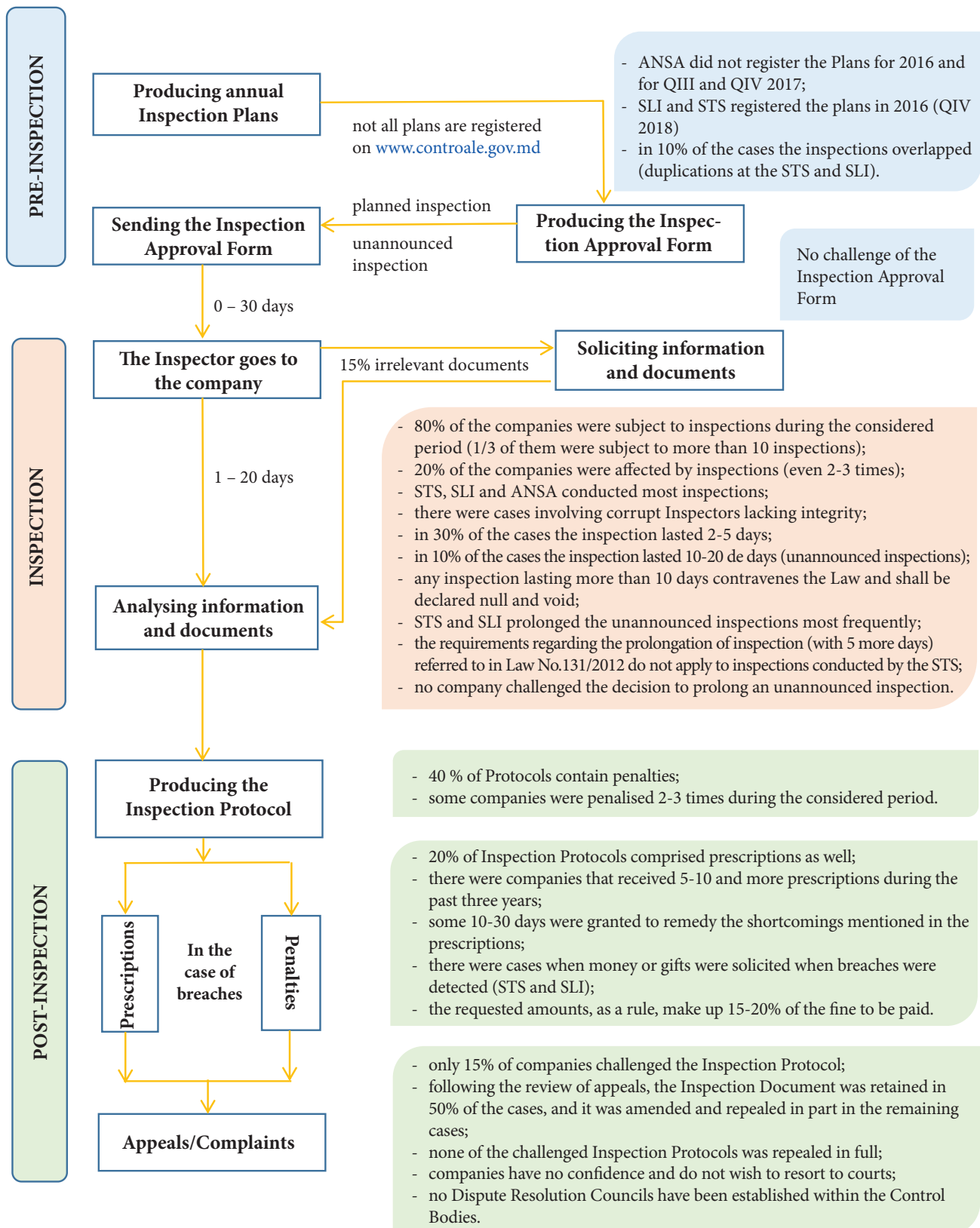
Third of all, companies do not preclude such cases as they have no confidence in law enforcement bodies, they do not believe that the case might be addresses, having fear that the Company or even the Informant would suffer. Those who decided to fight regret it in 50% of the cases.

The general picture of breaches and the Control Bodies that committed them, mentioned by Economic Operators, are as follows:

Table 4. Breaches committed by Control Bodies.

	STS	SLI	ANSA	Other Control Bodies
Non-compliant conveyance of the Inspection Approval Form				
Inspections overlapping and duplication				
Conducting the inspection within the maximum period laid down by legislation				
Prolongation of unannounced inspection period (exceeding the limits)				
Requesting information and documents irrelevant for the inspection subject-matter (including personal information or data on commercial secrecy)				
Affecting the regular operation of the Economic Operator				
Imposing penalties, restrictive measures				
Issuing prescriptions, having stated a very tight timeframe to remedy the shortcomings				
Soliciting payments to avoid penalties				

State inspection in practice



IV. Moldovan Business Conclusions and Recommendations

The analysis of the legal framework and of the information derived from the interviews held with private business people residing in Chisinau and beyond its boundaries helped us identify the gaps, problems and risks in the process of conducting state inspections. The implementing differences are noticeable when comparing the two diagrams displaying the process of a state inspection according to the law and the actual process of a state inspection. Further, we present the gaps and problems identified by the Business, as well as solutions and recommendations proposed by the National Business Agenda Members aimed at remedying the gaps/problems.

I. The action of Law No.131/2012 on State Inspection on Business Activity

Issues: The procedures for conducting tax inspections by the State Tax Service, noted primarily by Economic Operators due to the committed breaches, described by the Tax Code and by in-house guidelines, defer from the procedures laid down by the general law on inspections.

Recommendations: Repeal the exemption from Law No.131/2012 on State Inspection on Business Activity (Article 1(4) e)) and expand the provisions of this Law to cover the inspections carried out by the State Tax Service.

Expected Results: The tax inspections would follow the fundamental principles, rules and general requirements governing all inspections covered by

a single legal document – Law 131/2012. This fact would ensure observing the rights and guarantees of the individual subject to inspection, and raising the Economic Operators' awareness about their rights and obligations in an easier way.

II. (Ir)regularities at the Control Bodies visiting companies most frequently

Issues: The State Labour Inspectorate and the National Agency for Food Safety, which activity is governed by Law No.131/2012 (with some exemptions), were mentioned by Economic Operators as the Control Bodies that visited their companies most often during the reference period, and failed to remain on track in terms of complying with the legal requirements.

Recommendations: The State Chancellery shall focus and step up its supervision of proper enforcement of Law No.131/2012 by the State Labour Inspectorate and by the National Agency for Food Safety, from the planning phase till the phase of conducting inspections, the unannounced inspections being subject to enhanced monitoring, in particular.

Expected Results: Mandatory notification of empowered bodies in the course of analysing and managing the information should alleged abuses, unlawful deeds or breaches of legal principles be detected (after considering also the petitions and notifications received from Economic Operators), having provided advisory support to companies.

III. Preventive and Advisory Inspection

Issues: Although, as per the law, the inspection shall be a preventive measure, the focus being placed on its advisory feature, in reality the current system of state inspections is focused mainly on punitive measures oriented towards penalising the Economic Operators.

The business people consider that when Inspectors visit their companies, from the very beginning they are convinced that the undertakings operate with irregularities and breaches; therefore, they have great chances to complete the inspection by getting money or gifts. All state inspection gaps and problems of identified by the Economic Operators, are, *de facto*, means and methods of putting “pressure” used by Control Bodies to demonstrate that the Economic Operator committed infringements, having in this way substantive “arguments” to “negotiate” the reward/carrot for not punishing the individual subject to inspection. In fact, “penalising” means deriving certain material benefits/advantages from those companies.

Recommendations: In order to apply efficiently the inspection advisory principles and its preventive feature in practice, and to avoid the negative consequences of state inspections, the Business recommended to draft a specific law or make addenda to Law No. 131/2012 by inserting a rule according to which the first inspection visit carried out by public authorities would be an informative visit, not resulting in imposing penalties or restrictive measures, granting sufficient time to Economic Operators to remedy the detected shortcomings.

In the Business vision, this mechanism shall work as follows:

1. initially, an Economic Operator shall be subject to an advisory inspection, and no penalties or restrictive measures should be imposed;
2. the Inspector shall conduct an analysis of the Economic Operator activity and state non-compliant findings, if any;
3. the Inspector shall produce a list of actions and measures, as per the requirements laid down by regulatory documents, which shall be undertaken by the Economic Operator to remedy the shortcomings;
4. the Inspector, jointly with the Economic Operator, shall determine the deadline (within the timeframes laid down by law) for remedying the shortcomings, having produced and signed a document (plan) to this end;
5. after the expiry of the deadline, the Control Body shall check the extent to which the agreed upon actions and measures have been carried out;
6. if the Economic Operator failed to remedy the shortcomings, he/she shall be penalised as per the law.

Expected Results: Introducing some tools that would prevent breaches to be committed; informing and advising the Economic Operators, granting them the possibility to adjust the minor deviations, and providing them with an appropriate timeframe to remove the shortcomings.

V. IDIS “Viitorul” Recommendations

Government and Parliament

I. Provide some regulatory tools to ensure prevention of breaches and contraventions committed by Economic Operators. A special law could be developed to this end, i.e. a Prevention Law or make some amendments and addenda to the Contravention Code No.218/2008 and/or to Law No.131/2012 on State Inspection on Business Activity. The following tools could be used for this purpose:

1. When the Inspection Protocol states a contraventions committed by an Economic Operator: if this is an infringement committed for the first time, the Economic Operator shall be warned without imposing complementary penalties, and a Remedial Action Plan shall be devised and attached to the Protocol. The Remedial Action Plan shall contain measures to be undertaken in order to meet the obligations provided by law, and a deadline for addressing the detected irregularities (for instance: 90 days at most). Within the stated period (for instance: 10 days) after the date of expiry of the remedial timeframe, the Control Body shall resume the inspection and check the extent to which the prescribed remedial measures have been carried out.
2. Insert the obligation for the Control Bodies to provide guidance to Economic Operators in order to apply the legal provisions correctly and uniformly (nowadays, Law No.131/2012 stipulates only the fundamental principle of inspection, i.e. its consultative aspect, without any elaborations). To this end, the Control Bodies shall be responsible for:
 - a) publishing high-frequency cases (typical breaches) on the public authorities WEB pages, on www.controale.gov.md and guiding solutions issued for such cases;
 - b) developing guidance and control procedures and their publication on the WEB pages to be used by all competent persons in the course of inspection;
 - c) developing documentary materials and handbooks and their publication on the WEB pages intended to raise Economic Operators' awareness on the rights and obligations of Control Bodies and of Economic Operators subject to inspection; publication of provisions of the legislation in force, having stated clearly for each Control Body the possible breaches regarding the Economic Operators, contraventions, penalties and other applicable measures.
3. Explicit specification in Law No.131/2012 of situations and infringements for which no penalties or restrictive measures shall be imposed by Control Bodies. In particular, it is appropriate to state that no penalties would be imposed if unintended breaches are detected that caused no material damage, while the irregularities can be addressed by the Economic Operator, who would be granted enough time to this end in the prescriptions issued by the Control Body. Such provisions could be included in Art.3, which stipulates the fundamental principles of inspections, and in Art.5¹, which governs the general limits of inspections and the measures undertaken in the course of inspection.

4. Setting up in Law No.131/2012 (Art.29 (4)) a maximum period to address the shortcomings stated in the prescriptions issued by the Control Bodies (for instance: 90 days), to grant the Economic Operator enough time to remedy the issues.

II. Expand the provisions of Law No.131/2012 on State Inspection on Business Activity on inspections carried out by the State Tax Service. To this end, it would be required to repeal the exemption referred to in Art.1 (4) e) of the Law. As a result, the inspection carried out by the State Tax Service would be subject to fundamental principles, general rules and requirements stipulated by Law No.131/2012, which governs all inspections.

State Chancellery

III. Establishment, by the State Chancellery, of efficient and confidential channels for Economic Operators to report non-compliant conduct of inspectors and of reporting channels through which the competent law enforcement bodies to be notified. The State Chancellery, as a body responsible for inspection oversight, following the consideration of petitions and complaints received from Economic Operators through reporting systems, shall provide advisory support to companies and notify the empowered law enforcement bodies by all means.

IV. The State Chancellery shall step up the efforts aimed at inspection oversight, in particular, the unannounced inspections carried out by the Control Bodies on which there is reliable information on abuses and breaches of legal provisions (following the petitions and complaints lodged by Economic Operators). If defective systemic practices in the area of state inspections are detected, the State Chancellery shall come up with solutions to improve the situation, and to provide such information and analyses to the National Dispute Resolution Council in the area of State Inspection (when the latter commence its work).

Control Bodies

V. Proper implementation by Control Bodies of requirements for conducting state inspections referred to in Law No.131/2012, at all inspection phases:

Pre-inspection phase:

- ensure compliance with the minimum and maximum period for sending the Inspection Approval Form (for the planned inspection);
- register all planned inspection plans in the State Register of Inspections;
- ensure better planning and coordination of inspections to avoid overlapping and duplication;

Inspection phase:

- conduct the inspection without affecting the regular activity of the Economic Operator;
- reduce the duration and completing the inspection when it is obvious that the Inspector's possibilities to conduct the inspection have been exhausted;
- avoid the extension of the unannounced inspection period when there is no need or substantiated reasons for that;

- cease requesting information and documents, which are not related to the inspection subject-matter (including personal data or information related to commercial secrecy);

Post-inspection phase:

- non-application of penalties and restrictive measures in case of detecting an unintended breach, which caused no material damage and could be addressed by the Economic Operator;
- grant enough/more time to the Economic Operator upon the issuance of prescriptions to remove the detected shortcomings;

VI. *Develop, implement and observe the anti-corruption compliance and integrity rules and standards, the ethics and professional conduct rules in the activity of Control Bodies.* To this end, the Control Bodies shall be guided by the provisions of Integrity Law No.82/2017 and by the related regulatory framework subordinated to this Law. Moreover, further efforts are possible and will be required to implement the International Standard for Anti-Bribery Management Systems ISO 37001:2016.

VII. *Implement an efficient internal system to report all non-compliant conduct of inspectors,* having ensured confidentiality and protection to whistleblowers (public and private). To this end, the provisions of the Law on Whistleblowers will be applied upon its enactment on 17 November 2018.

VIII. *Implement, by the Control Body Management, financial incentives* linked to compliant actions, absence of disciplinary penalties, integrity and correct decisions taken by inspectors in the course of state inspections. Pursuant to Government Decision No.331/2012 on Civil Servants' Wages, the Control Body Management shall grant an annual bonus, equal to 10% of the overall yearly wage, as well as other incentives under the conditions set out by an internal regulatory document of the authority.

Economic Operators

IX. *Develop and implement corporate governance, anti-bribery, business integrity and ethics rules and standards.* To this end, the undertakings shall be responsible for developing and implementing Business Ethics Codes/ Corporate Governance Codes and/or Anti-bribery Compliance Programmes, which would transpose the international anti-bribery standards and principles into practice, as well as the national anti-corruption legislation.

X. *Use the rights covered by Law No.131/2012 and challenge the Inspection Protocol and other documents issued by the Control Body* whenever such documents are unlawful, groundless and abusive.

Business Associations and Chambers of Commerce and Industry

XI. *Develop and implement corporate governance, anti-bribery, business integrity and ethics rules and standards,* as well as apply the International Standard for Anti-Bribery Management Systems ISO 37001:2016. The Associations shall lead and boost the development of such standards by their members.

XII. *Train the members of Business Associations and the Chambers of Commerce and Industry on corporate governance, anti-bribery rules and standards, business integrity and ethics,* as well as provide support to their members in developing and implementing such standards and rules.

XIII. Strengthen the role of Business Associations and of Chambers of Commerce and Industry as whistleblowers of corruption deeds and denunciators of such deeds with the competent bodies. They shall, from the one side, establish efficient and confidential reporting channels for their members and, from the other side, establish reporting channels with the competent law enforcement bodies.

XIV. Provide legal assistance to their members whenever they face corruption deeds in practice. Business Associations and Chambers of Commerce and Industry have the possibility to hire a Lawyer or an Attorney at Law who would provide legal assistance to their members: either primary assistance/consulting or legal assistance in Courts. Only by joint action and by developing a common system of protection within the private sector it would be possible to succeed and demonstrate to all that such conduct would not be tolerated anymore.

XV. Create anti-corruption coalitions at the level of branch, sector, and region or at the national level.

The collective action would enable congregating the efforts to fight corruption, having involved different stakeholders; collaborating and building an anti-bribery alliance, launching anti-corruption initiatives, establishing an integrity movement, which would lead to a clean and honest business environment.

What is coming next?

The Business perception outcomes in terms of state inspections and the Economic Operators' solutions to mitigate the corruption risks in the course of inspections would serve as a starting point for future analyses, research and recommendations aimed at improving the regulatory framework in this area.

The Institute for Development and Social Initiatives "Viitorul" and members of the National Business Agenda expressed their availability to collaborate with the public authorities responsible for developing public policy and with Control Bodies responsible for policy implementation with the aim to remedy the gaps and problems in the course of state inspections and identify solutions to build up an efficient and transparent system of state inspection on business activity.

IDIS „Viitorul” reprezintă o instituție de cercetare, instruire și inițiativă publică, care activează pe o serie de domenii legate de: analiză economică, guvernare, cercetare politică, planificare strategică și management al cunoștințelor. IDIS activează în calitate de platformă comună care reunește tineri intelectuali, preocupați de succesul tranziției spre economia de piață și societatea deschisă în Republica Moldova.

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