Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Azerbaijan

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

OECD

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Azerbaijan

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the OECD and do not necessarily reflect the views of the European Union.

Please cite this publication as:
OECD (2024), *Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Azerbaijan: The Istanbul Anti-Corruption Action Plan*, OECD Publishing, Paris, https://doi.org/10.1787/a17aca4c-en.

ISBN 978-92-64-34460-0 (PDF)

Photo credits: Cover design © Angelique Portrait Photography LTD.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

Foreword

This report was prepared in the framework of the 5th round of the Istanbul Anti-Corruption Action Plan (IAP), a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN).[1] The programme covers ten countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine, and Uzbekistan. Other countries of the region, OECD countries, international organisations and non-governmental partners participate in the implementation of the IAP as experts and donors.

The ACN introduced an indicator-based peer review for the IAP 5th round of monitoring (2023-2026). After the pilot[2] that tested the new methodology was completed, the revised IAP 5th Round of Monitoring Assessment Framework and Monitoring Guide were agreed at the ACN Steering Group in November 2022. The framework benefited from a thorough and inclusive consultative process, marking strong ownership and commitment of the participating countries. The 5th round of monitoring was launched in January 2023 in Armenia, Azerbaijan, and Moldova with the support of the EU for Integrity Programme.

The peer review team included the peer reviewers: Ms. Edita Kavoliūnienė (Lithuania) (PA 1, PA 2), Ms. Ana-Lorena Sava (Romania) (PA 3), Ms. Tetiana Kheruvimova (EBRD) (PA 4), Mr. Dirk Plutz (EBRD) (PA 5), Prof. Guillaume Tusseau, Mr. (France) (PA 6), Mr. Vitaliy Kasko (Ukraine) (PA 7, PA 8, PA 9), and the OECD/ACN Secretariat: Mr. Maris Urbans (PA 3, PA 4, PA 7-9), dr. Jolita Vasiliauskaite, Ms. (team leader and PA 1, PA 2, PA 5, PA 6), Ms Arianna Ingle (editorial support) and Ms. Paloma Cupello (administrative support). The ACN manager Ms. Olga Savran and Ms. Rusudan Mikhelidze, the Head of the ACN Monitoring Programme, finalised the text of PA 6.

The National Coordinator of Azerbaijan for the ACN, the Office of Prosecutor General of the Republic of Azerbaijan, was represented by Mr. Sabuhi Aliyev, Head of Preventive Measures and Inquiry Department of the Anti-Corruption Directorate, Mr. Natig Eyvazov, Head of the of the Organizational and Information Support Department of the Anti-Corruption Directorate, Mr. Isfandiyar Hajiyev, Deputy head of the Organizational and Information Support Department of the Anti-Corruption Directorate, and Mr. Nijat Nagiyev, prosecutor of the Organisational and Information Support Department of the Anti-Corruption Directorate.

The assessment period for this report is 2022. The review was launched in December 2022. Azerbaijan provided replies to the questionnaire with supporting materials in March 2023. The on-site visit to Azerbaijan took place on 17-21 April 2023 and included sessions with governmental and non-governmental representatives. Additional virtual sessions with the non-governmental stakeholders were also held on 26 April 2023. In addition, non-governmental stakeholders provided replies to the monitoring questionnaire, and commented on the draft report. Following bilateral consultations, this report was presented at the OECD/ACN plenary meeting on 3 October 2023. The Monitoring Plenary at its 22nd meeting adopted the

[1] https://www.oecd.org/corruption/acn/istanbul-action-plan.htm

[2] Pilot report on Ukraine, hereinafter referred to as “pilot” : OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://doi.org/10.1787/b1901b8c-en.

baseline monitoring report of Azerbaijan, except for its Performance Area 6 – “Independence of Judiciary” - which was adopted later through a written procedure.

Table of contents

FIGURES

TABLES

Acronyms

CAN	Anti-corruption network for Eastern Europe and Central Asia
ADY	Azerbaijan Railways (national state-owned rail transport operator)
AIH	Azerbaijan Investment Holding
ASCO	Azerbaijan Shipping Company
AZAL	Azerbaijan Airlines
Azergold	National state-owned mining company
AZN	Manat (national currency of Azerbaijan)
BSA	Baku Stock Exchange
CBA	Central Bank of Azerbaijan
CC	Criminal Code
CCC	The Commission on Combatting Corruption
CEO	Chief Executive Officer
CGS	Corporate Governance Standards of Azerbaijan
COI	conflict of interests
CPC	Criminal Procedure Code
Directorate	The Anti-Corruption Directorate with the Prosecutor General of the Republic of Azerbaijan
IAP 5th round Guide	Guide prepared as a reference document for monitoring teams, National Coordinators and other stakeholders involved in the 5th Round of Monitoring under the Istanbul Anti-Corruption Action Plan (IAP) to supplement the Assessment Framework (monitoring methodology and performance indicators) and to facilitate the interpretation and application of the benchmarks.
JLC	Judicial-Legal Council of Azerbaijan
LCC	Law on Combating Corruption
PGO	Prosecutor General Office of the Republic of Azerbaijan
RFQ	request for the quotations as public procurement method established by the Law on Public procurement of Azerbaijan
RFP	request for the proposals as public procurement method established by the Law on Public procurement of Azerbaijan
SMBDA	Small and Medium Business Development Agency
SMEs	Small and medium enterprises
SOE	State-owned enterprise
SOCAR	State Oil Company of Azerbaijan Republic
SSACMC	State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy of Azerbaijan
SSS	State Security Service
STS	State Tax Service

Methodology

The IAP 5th round of monitoring uses an indicator-based methodology to ensure higher objectivity, consistency, and transparency of peer reviews. The IAP 5th round of monitoring Assessment Framework and Monitoring Guide derive from international standards and good practices based on a stocktake of the previous IAP monitoring rounds highlighting achievements and challenges in the region.[1] The indicators evaluate anti-corruption policy, prevention of corruption, and criminal liability for corruption, with a focus on practical application and enforcement, particularly at a high-level.

The 5th round monitoring Assessment Framework includes nine Performance Areas (PAs) with four indicators each and a set of benchmarks under each indicator. Benchmarks are further split into elements to ensure the granularity of the assessments and recognition of progress.

The maximum possible score for a Performance Area is 100 points. Indicators under each Performance Area have an equal weight (25 points each). Benchmarks also have an equal weight within an indicator. The exact maximum weight of a benchmark depends on the overall number of benchmarks included in the indicator (i.e., the total weight of the indicator divided by the total number of benchmarks within that indicator).

Each benchmark and its elements (numbered as ''A'', ''B'', ''C'', ''D'' …) are scored individually by three different scoring methods. The performance level for each Performance Area is determined by aggregating scores of all benchmarks within the respective Performance Area according to the below scale (Table 1). Scores of Performance Areas are not aggregated.

Table 1. Performance level

PERFORMANCE LEVEL	A OUTSTANDING	B HIGH	C AVERAGE	D LOW
SCORE	76-100	51-75	26-50	<25

[1] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia.

Executive summary

In 2022, Azerbaijan continued to work on the development of the anti-corruption policy and prosecution. Some initial steps in the business integrity, including selected SOEs, were launched. Independence of the judiciary related legal regulations, including the selection and evaluation of judges, were developed based on the good practices of several countries. The role of the Judicial Legal Council of Azerbaijan shall be strengthened further to ensure sound self-governance of the judiciary in the country. However, there are still areas where more efforts are needed, including implementation of the control of COI and assets declaration system, ensuring sound competition in the public procurement, investigation and prosecution of the high-level corruption, enhanced implementation of confiscation of the instrumentalities of corruption, etc.

The Authorities of Azerbaijan informed about the efforts to involve civil society in the development of the anti-corruption policy documents and monitoring of the implementation. Besides this, it is very important to ensure secure and supportive conditions for the activity of the CSOs, especially in the anti-corruption area. Support of the CSOs and citizens is essential for the effective anti-corruption activity. Therefore, Azerbaijan should welcome and encourage active participation of the CSOs in anti-corruption to benefit of public trust and support, and to use the important source of information about the corruption risks.

Anti-corruption policy. The national anti-corruption policy document the last time was updated in 2022 in Azerbaijan. The recently adopted National Action Plan to Strengthen the Fight Against Corruption covers 2022-2026. Several sources of information were considered while elaborating this new policy document. Comprehensive analysis of corruption and corruption related risks in the country may enable to identify the anti-corruption policy priorities and to use the resources in a more efficient way. The National Action Plan contains objectives, measures with implementation deadlines and responsible agencies. The funding is arranged via the budgets of the implementing agencies. Outcome and impact indicators, if set, would help to make the monitoring and impact assessment more effective. Coordination and monitoring of implementation of the National Action Plan functions were rearranged aiming to separate it. Coordination was assigned to the Cabinet of Ministers of Azerbaijan and shall be conducted with the assistance of the Office of Government. The monitoring functions remain among the duties of the Secretariat of the Commission on Combatting Corruption of Azerbaijan. The relevant state agencies put efforts to make the process of preparation of the national anti-corruption policy document and monitoring of implementation transparent and engaging.

Conflict of interest and asset declarations. The laws of Azerbaijan provide very basic provisions for preventing conflict of interest of public officials in individual situations. Definitions of conflict of interests (COI) are scattered among various national legislative acts and codes of ethics. There is no universally applicable definition of COI covering all public officials. Definition of private interests is not established. The Law on Combating Corruption of Azerbaijan does not stipulate a duty of officials to report a COI nor a duty to abstain from decision-making until the COI is resolved. There is no general list of methods that can be used to resolve an ad hoc COI in Azerbaijan. There was no dedicated agency, unit, or staff to perform functions related to COI management. Sanctions were not routinely applied for COI related violations across public sector.

The scope of public officials declaring assets in Azerbaijan is quite broad. However, even for the categories of the officials who are required to declare by the law, the disclosure system is not operational for lack of bylaws. A form of the assets' declaration is still not prepared and functional in Azerbaijan. Therefore, asset declaration is still not implemented in practice – a situation that exists since 2005.

Protection of whistleblowers. Azerbaijan has not endorsed a dedicated law on the whistleblower protection. The legal framework for whistleblower protection is quite fragmented, as various elements of it are implemented in multiple laws. Some legal provisions lack certainty, and in the absence of the relevant case law, they can be interpreted in different, conflicting ways. Azerbaijani legislation does not yet fully provide or does not provide at all for release from liability related to reporting, protection from all forms of retaliation, state legal aid, consultation on protection and some other forms of whistleblower protection. Some measures of protection, although present in the legislation, are not applied in practice. This raises concerns about a possible lack of trust in the effectiveness of the whistleblower protection framework, as well as a possible lack of trust in government agencies responsible for implementing protection in practice. To encourage the reporting of corruption, authorities should develop trust in reporting channels and available protection measures.

Business integrity. The Corporate Governance Standards establish the responsibility of supervisory boards of joint stock and limited liability companies to ensure risk management. However, these standards are voluntary, and there is no mechanism to monitor their implementation by the private sector companies. Some entities are obliged to identify and verify the beneficial ownership and report discrepancies under the anti-money laundering legislation. However, Azerbaijan lacks a public disclosure mechanism and a centralized beneficial ownership register. Azerbaijan has not established a Business Ombudsman. Instead, the Ministry of Economy is the primary authority responsible for addressing complaints from businesses concerning violation of their rights by other public authorities. Azerbaijan has made efforts aimed at international standards` adherence, yet selected state-owned companies demonstrated varied levels of compliance regarding disclosure and anti-corruption practices. Better performance was displayed in transparency of supervisory board appointments, and material information disclosure.

Integrity in public procurement. Public procurement legislation in general covers the acquisition by state budget funds of goods, works, and services concerning public interests in Azerbaijan. Procurements funded by the internal funds of utilities, natural monopolies, SOEs and MOEs are not subject to procurement law procedures and are carried out in accordance with internal (corporate) procurement policies of such enterprises. The Law on Public Procurement stipulates open tendering as the default procurement method for the procurement of goods, works, and services above a set threshold. The law provides for only four exceptions from the competitive procurement procedure. However, direct contracting was used too extensively in 2022. It should be ensured that the application of direct contracting should be reduced to the absolute minimum for objectively justified case and that relevant guidance is developed and published, which outlines the application of the four criteria for exceptions. There are some basic COI regulations in public procurement that should be further developed and brought in line with the relevant international standards. Debarment and effective prosecution of corruption related offences in public procurement should be ensured. The e-procurement system is at the initial development stage in Azerbaijan. Public access to information and data on public procurement should be enhanced.

Independence of judiciary. The Judicial Legal Council (JLC) participates in the selection of the candidates to judges, evaluation, promotion of judges, and dismissal in Azerbaijan. However, to ensure independence of the judiciary, the role of the JLC as the judicial governance body shall be strengthened in the decision making, especially regarding appointment and dismissal of judges, appointment of the presidents of the courts, while the role of the political bodies of the country in making these decisions shall be limited. Procedures of the selection of the candidates to judges, evaluation and promotion of the judges are set by the legislation and quite transparent. The relevant criteria should be further developed to ensure that the final decisions are clearly made based on merits. Financial (budgetary) guaranties of judiciary shall be ensured by the law, including active role of the judicial governance body in the budgetary procedure.

The publicity of the activity of the JLC shall be further enhanced ensuring timely publication of the decisions of the JLC with the justification. The disciplinary procedure of judges is set by the law, transparent, and the due process for a judge in disciplinary proceedings is ensured.

Independence of public prosecution service. The selection procedure of the Prosecutor General, as provided by the law, was not competitive and fully transparent. The President of Azerbaijan is entitled to appoint and dismiss the Prosecutor General, subject to the approval of Parliament. There is no Prosecutorial Council or conceptually equivalent body in Azerbaijan that would have competence over the career issues of prosecutors. While recruitment to the Prosecutor's Office seems to be merit-based to a great extent, promotion procedures still include an element of discretionary decision-making. While some grounds for disciplinary liability and dismissal of prosecutors are vague, the law stipulates the main steps of the procedure. The Prosecutor's Office is funded up to its needs from the state budget; the law sufficiently protects the remuneration level of prosecutors.

Specialized anti-corruption institutions. The Anti-Corruption Directorate ("Directorate"), within the Prosecution Service of the Republic of Azerbaijan, is a dedicated institution for investigating corruption. Procedures for the appointment of the head of the Directorate are not transparent, with the President of the Republic of Azerbaijan and the Prosecutor General having the decisive role. Staff of relevant structural units of the Directorate specialize in detection and investigation of corruption. The Directorate is fairly well-equipped in terms of available methods of detection and investigation of corruption. There is no dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including those from corruption. Azerbaijan is taking steps to close this gap and transform one of the departments of the Prosecutor General's Office into a dedicated asset recovery office. The Directorate publishes its semi-annual and annual activity reports, which contain a wide range of performance data.

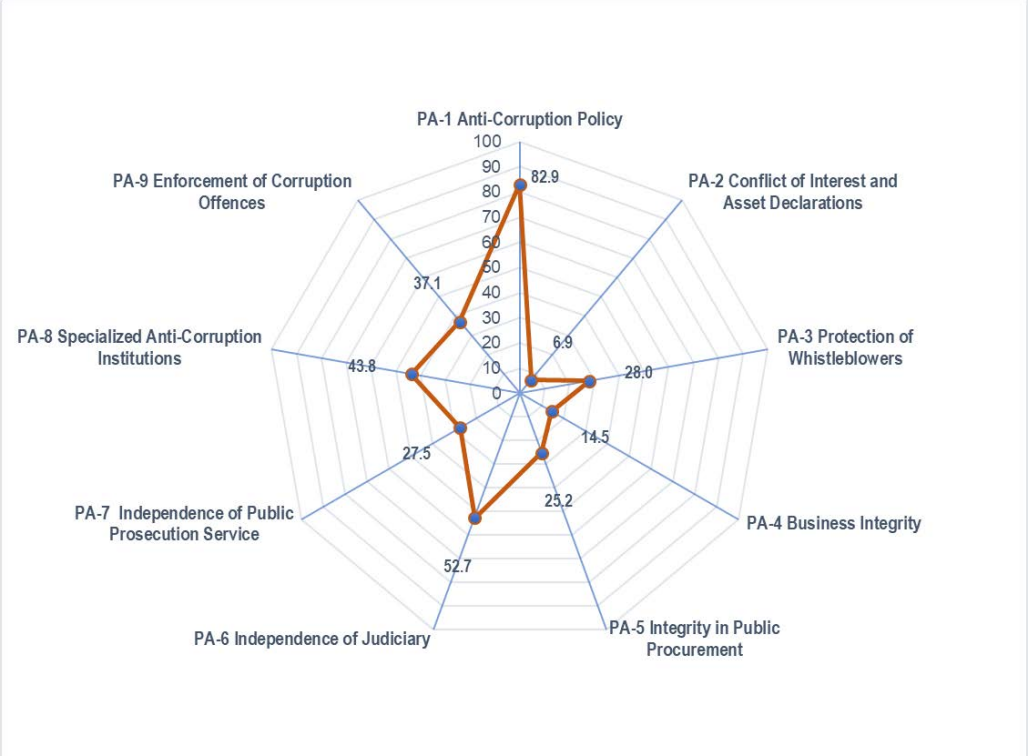
Enforcement of corruption offences. Criminal liability for corruption is enforced in Azerbaijan, but more efforts should be focused on targeting high-level public officials. The offence of illicit enrichment has not been criminalised, and there are no procedures for the confiscation of unexplained wealth through administrative or civil proceedings. The authorities were not sufficiently effective in enforcing money laundering with public sector corruption as a predicate offence, and as an autonomous offence. Some provisions for special exemption from active bribery are prone to abuse. No corruption investigation was terminated due to the expiration of the limitation period. While corporate criminal liability was established, its implementation for corruption offences was very limited. There were no provisions for fully autonomous corporate criminal liability of legal entities, and there was no routine practice of application of the monetary sanctions (measures) and confiscation of corruption proceeds to legal persons in 2022. Azerbaijan should enhance the implementation of the confiscation of instrumentalities of corruption. Provisions on launching formal investigations, based on media publications, raise serious concerns. A legal requirement for the media to submit documents supporting published corruption allegations might be a significant impediment to detecting corruption and undermine the role of the media in this respect. Corruption allegations published in the foreign media were not investigated due to national legislation regulating the grounds for opening an investigation.

Table 2 shows Azerbaijan's performance levels for all evaluated areas and the total score in each performance area based on the following scale:

Table 2. Performance level and scores of Azerbaijan by Performance Area

Performance Area	Performance Level	Score
PA-1 Anti-Corruption Policy	A	83
PA-2 Conflict of Interests and Asset Disclosure	D	7
PA-3 Protection of Whistleblowers	C	28
PA-4 Business Integrity	D	15
PA-5 Integrity in Public Procurement	C	25
PA-6 Independence of Judiciary	B	53
PA-7 Independence of Public Prosecution Service	C	28
PA-8 Specialised Anti-Corruption Institutions	C	44
PA-9 Enforcement of Corruption Offences	C	37

Figure 1. Anti-Corruption Performance of Azerbaijan by Performance Area



1 Anti-corruption policy

The national anti-corruption policy document the last time was updated in 2022 in Azerbaijan. The recently adopted National Action Plan to Strengthen the Fight Against Corruption covers 2022-2026. Several sources of information were considered while elaborating this new policy document. Comprehensive analysis of corruption and corruption related risks in the country may enable to identify the anti-corruption policy priorities and to use the resources in a more efficient way. The National Action Plan contains objectives, measures with implementation deadlines and responsible agencies. The funding is arranged via the budgets of the implementing agencies. Outcome and impact indicators, if set, would help to make the monitoring and impact assessment more effective. Coordination and monitoring of implementation of the National Action Plan functions were rearranged aiming to separate it. Coordination was assigned to the Cabinet of Ministers of Azerbaijan and shall be conducted with the assistance of the Office of Government. The monitoring functions remain among the duties of the Secretariat of the Commission on Combatting Corruption of Azerbaijan. The relevant state agencies put efforts to make the process of preparation of the national anti-corruption policy document and monitoring of implementation transparent and engaging.

Figure 1.1. Performance level for Anti-Corruption Policy is outstanding

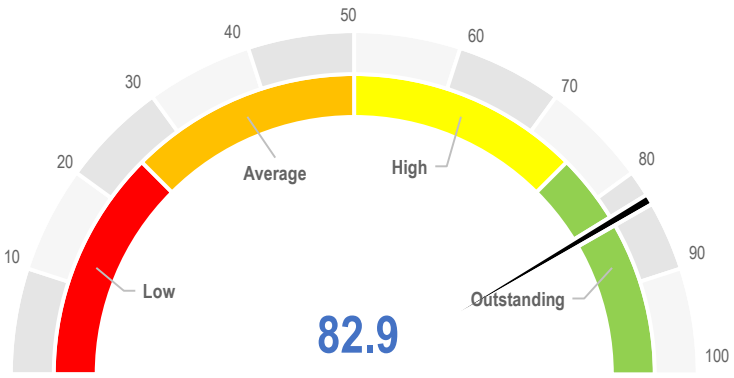
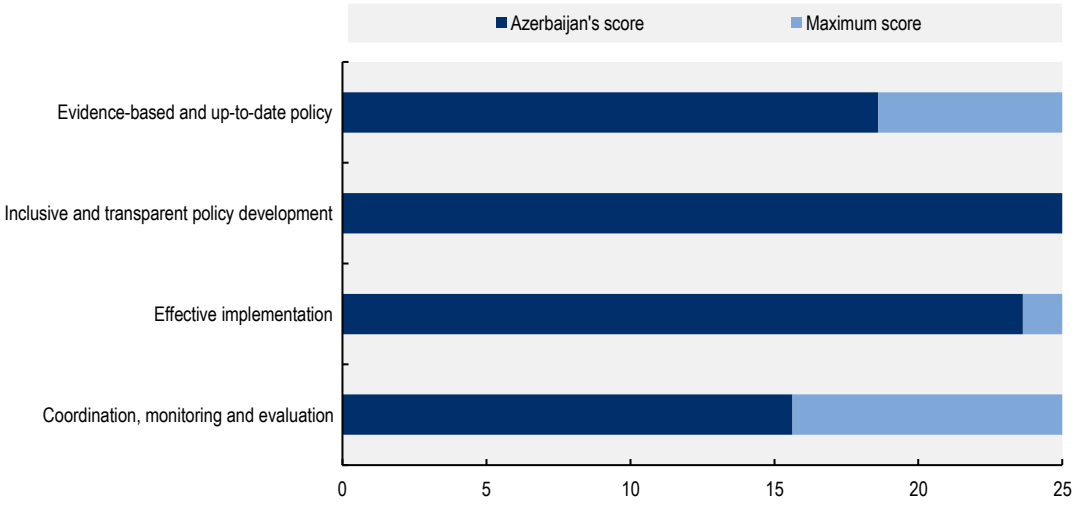


Figure 1.2. Performance level for Anti-Corruption Policy by indicators



Indicator 1.1. The anti-corruption policy is evidence-based and up-to-date

Background

The 2022-2026 National Action Plan to Strengthen the Fight Against Corruption was approved by the Decree of the President of the Republic on 4 April 2022. It is the sixth national policy document on fighting corruption in Azerbaijan. Starting from 2004, the specialized anti-corruption policy documents were developed and adopted periodically. During 2016-2018 and 2020-2022, anti-corruption measures were combined with the open government measures in the National Action Plans for Promotion of Open

Government. The current national anti-corruption policy document again is intended to concentrate on anti-corruption measures exclusively.

Assessment of compliance

Benchmark 1.1.1.

The following evidence has been used for developing objectives and measures of the policy documents, as reflected in the policy documents or their supporting materials:

Element	Compliance
A. Analysis of the implementation of the previous policy documents (if they existed) or analysis of the corruption situation in the country	X
B. National or sectoral corruption risk assessments	✓
C. Reports by state institutions, such as an anti-corruption agency, supreme audit institution, and law enforcement bodies	✓
D. Research, analysis, or assessments by non-governmental stakeholders, including international organisations	✓
E. General population, business, employee, expert, or other surveys	✓
F. Administrative or judicial statistics	✓

Element A – not compliant. No clear evidence was provided to prove that analysis of the implementation of the previous policy documents or analysis of the corruption situation in the country were used while developing the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption (further also the National Action Plan).

Element B – compliant. The national risk assessment of laundering proceeds of crime or legalization of other property and the fight against the financing of terrorism in Azerbaijan in 2015-2021 was used while developing the measures of priority 3 of the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption. This document meets the requirement of the element B of the benchmark. However, it covers only one priority of the National Action Plan and addresses only one of the corruption offences. It would be useful to invoke national corruption risk assessment or more numerous sectoral risk assessments to cover situation in the country more fully and to make the informed decision about the priorities of anti-corruption policy.

Element C – compliant. Annual report of the Anti-Corruption Directorate with the Prosecutor General (the Directorate) was used to develop the National Action Plan. Several measures of the National Action Plan (i. e., 1.11, 2.10, 3.5, 5.1, 5,3, 5.4, 6.10) were included based on this report. Reports of other law enforcement bodies and especially audit reports by the supreme audit institution shall be also invoke for the development of anti-corruption policy documents.

Element D – compliant. Azerbaijan informed that recommendations of GRECO, OECD/ACN and MONEYVAL evaluation were considered while elaborating the National Action Plan.

Element E – compliant. Azerbaijan informed that two measures of the National Action Plan (namely, 4.3. and 4.9.) aiming to limit arbitrariness and improve transparency and quality of public services were based on the analysis of public opinion polls conducted by the Center for Social Research.

Element F – compliant. The statistic of complaints received by the Anti-Corruption Directorate with the Prosecutor General and of criminal investigations and statistic of criminal cases provided in the activity

report of 2021 of the Supreme Court was used to identify risk areas while developing the National Action Plan.

In general development of anti-corruption policy document would benefit if the analysis of all available or most relevant documents and other sources of information covered by the elements of the benchmark 1.1. would be made to summarise the corruption situation and risks in the country. Such summary could help to define the anti-corruption priorities and develop the tasks and measures. Also using more various sources of information and data about corruption situation and risks in the country would help to improve the anti-corruption policy development further.

Benchmark 1.1.2.

	Compliance
The action plan is adopted or amended at least every three years	✓

Terms when the National Action Plan shall be amended or the action plan for the next period shall be adopted are not established. The Authorities of Azerbaijan informed that the National Action Plan will be amended as needed during its implementation. As a rule, national action plans are usually adopted for a period of two or three years in Azerbaijan. The current valid National Action Plan covers 2022-2026, i. e. quite long period of five years. The future practice will show if it will be ensured that the national anti-corruption policy document would stay relevant.

The 2022-2026 National Action Plan to Strengthen the Fight Against Corruption was approved by the Decree of the President of the Republic on 4 April 2022. It means that the anti-corruption policy document was valid during 2022 that is covered by the monitoring. Therefore, the requirements of the benchmark are met.

Benchmark 1.1.3.

Policy documents include:

Element	Compliance
A. Objectives, measures with implementation deadlines, and responsible agencies	✓
B. Outcome indicators	X
C. Impact indicators	X
D. Estimated budget	X
E. Source of funding	✓

Element A – compliant. The 2022-2026 National Action Plan to Strengthen the Fight Against Corruption contain objectives, measures, implementation deadlines, including also for each measure, and responsible agencies. The objectives of the National Action Plan should be identified clearly as such and highlighted in the text. The wording of the objectives should be more targeted and more narrowly defined to ensure better quality of anti-corruption policy implementation and monitoring.

Element B – not compliant. The outcomes, including initial, intermediate, and final, are set for each implementation measure. But there are no outcome indicators of the 2022-2026 National Action Plan itself.

Element C – not compliant. Impact indicators are not set in the 2022-2026 National Action Plan.

Element D – not compliant. The 2022-2026 National Action Plan does not include the estimated budget.

Element E – compliant. The 2022-2026 National Action Plan stipulates that the measures to be implemented within the framework of the National Action Plan will be funded by the state budget allocated to the relevant state bodies and other sources not prohibited by the law.

Indicator 1.2. The anti-corruption policy development is inclusive and transparent

Assessment of compliance

Benchmark 1.2.1.

The following is published online:

Element	Compliance
A. Drafts of policy documents	✓
B. Adopted policy documents	✓

Element A – compliant. The Authorities of Azerbaijan informed that the draft version of the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption was published online at the official website of the Commission on Combatting Corruption of Azerbaijan[2], which is accessible to the general public without restrictions or technical constraints, on 1st October 2021.

Element B – compliant. The final (adopted) version of the 2022-2026 National Action Plan was published on the day the approving decree of the President was adopted on the several official websites, including of the Commission on Combatting Corruption, of the office of the President of Republic, and other[3].

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

Element	Compliance
A. With sufficient time for feedback (no less than two weeks after publication)	✓
B. Before adoption, the government provides an explanation regarding the comments that have not been included	✓
C. An explanation of the comments that have not been included is published online	✓

The Authorities of Azerbaijan informed that the public consultations were held in the form of the joint meetings of the governmental and the non-governmental stakeholders, publishing the draft policy document, and sending it out for the individual NGOs for the comments.

[2] https://antikorrupsiya.gov.az/az

[3] https://president.az/az/articles/view/55719; https://e-qanun.az/framework/49349; https://antikorrupsiya.gov.az/az.

Element A – compliant. After the publication of the draft of the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption on 1st October 2021, the interested parties had six months to provide feedback.

Element B – compliant. The Authorities of Azerbaijan informed that explanation regarding the comments that have not been included is as rule provided for the author of the comment including governmental and non-governmental stakeholders. All the comments of NGOs and other civil society organizations that participated during the public consultations were included while developing the 2022-2026 National Action Plan, so no explanation was needed.

Element C – compliant. All the comments of NGOs and other civil society organizations were included while developing the 2022-2026 National Action Plan, so, as stated by Azerbaijan, no explanation of the rejected comments was not needed.

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

Benchmark 1.3.1.

	Compliance
Measures planned for the previous year were fully implemented according to the government reports	89%

Based on the annual evaluation of the implementation of the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption report[4], 89 per cent of the measures that were planned to be implemented in 2022 were fully implemented.

Benchmark 1.3.2.

	Compliance
Anti-corruption measures unimplemented due to the lack of funds do not exceed 10% of all measures planned for the reporting period	✓

11 per cent of the measures that were planned to be implemented in 2022 were assessed as not implemented in the report of the annual evaluation of implementation of the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption. The causes of delayed implementation or not implementation were not financial. Lack of time was mainly indicated as the reason of delayed implementation. The National Action Plan was adopted in April. Consequently, implementation started not at the beginning of the year as planned but later. As a result, less than full year was available for implementation of the measures planned for 2022.

[4] https://antikorrupsiya.gov.az/az/materiallar/fealiyyet-planin-icrasi

Indicator 1.4. Coordination, monitoring, and evaluation of anti-corruption policy is ensured

Background

Anti-corruption policy coordination and monitoring functions were initially assigned to the Secretariat of the Commission on Combatting Corruption of Azerbaijan. The 2022-2026 National Action Plan to Strengthen the Fight Against Corruption established the new coordination and monitoring system. Commendably coordination and monitoring functions were separated. Monitoring function remains with the Commission on Combatting Corruption. Coordination of the implementation was assigned to the Cabinet of the Ministers of Azerbaijan.

Assessment of compliance

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

Element	Compliance
A. Coordination and monitoring functions are assigned to dedicated staff (secretariat) at the central level by a normative act, and the staff is in place	✓
B. The dedicated staff (secretariat) has powers to request and obtain information, to require participation in the convened coordination meetings, to require submission of the reports of implementation	✓
C. Dedicated staff (secretariat) has the resources necessary to conduct respective functions	✓
D. Dedicated staff (secretariat) routinely provides implementing agencies with methodological guidance or practical advice to support policy implementation	✓

Element A – compliant. Coordination function is assigned to the Cabinet of the Ministers of Azerbaijan by the Decree of the President of the Republic of 4 April 2022 approving the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption (para 5.1.). Coordination function is fulfilled by the staff of the Office of the Cabinet of the Ministers arranging control of the measures by the responsible authorities and using the traditional control over the orders of the Cabinet tools.

Monitoring function is assigned to the Commission on Combatting Corruption of Azerbaijan by the Decree of the President of the Republic from 4 April 2022 approving the 2022-2026 National Action Plan (para 6.1.). The Anti-Corruption Commission as a specialised corruption prevention body at the national level composed of the members appointed by the executive, legislative and judicial bodies is stipulated by the Law on Combating Corruption of Azerbaijan. The Regulations on the Commission on Combatting Corruption set the monitoring of anti-corruption programmes as a duty of Commission. A permanent Secretariat is attached to the Commission and members of the Secretariat assist Commission in fulfilling its function of monitoring.

Element B – compliant. The Decree of the President of the Republic of 4 April 2022 approving the 2022-2026 National Action Plan obliges the implementing state agencies annually to inform the Cabinet of the Ministers and the Commission on Combatting Corruption about the results of implementation. The Regulations on the Commission on Combatting Corruption also stipulates the right to request and receive the information necessary to supervise and monitor implementation of anti-corruption programmes and

right to hear information and reports from heads of law enforcement and other state agencies and institutions.

Element C – compliant. The Authorities of Azerbaijan ensured that resources of the Cabinet of the Ministers and the Commission on Combatting Corruption are sufficient to conduct the assigned duties of coordination and monitoring of national anti-corruption programme. Two members of the Secretariat of the Commission are working with the monitoring issues. The coordination function is implemented via the Office of the Cabinet of Ministers specialist based on covered fields (ministries and other governmental agencies).

Element D – compliant. The Secretariat of the Commission on Combatting Corruption provides implementing agencies with methodological guidance or practical advice. The representative of the Secretariat of Commission informed that the focal points of the implementing agencies usually address the Secretariat by phone. Most questions refer to the elaboration of the annual work plans incorporating the measures of the 2022-2026 National Action Plan and corruption risk assessment.

Three examples of the assistance provided by the Secretariat of Commission on Combatting Corruption were provided, including the "Methodology and Rules for the identification, analysis and prevention of corruption risks in the activities of state bodies (institutions)", awareness raising events about ethical behaviour and the 2022-2026 National Action Plan.

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

Element	Compliance
A. A monitoring report is prepared once a year	✓
B. A monitoring report is based on outcome indicators	X
C. A monitoring report includes information on the amount of funding spent to implement policy measures	X
D. A monitoring report is published online	✓

Element A – compliant. Annual reporting to policy coordinating and monitoring state bodies about the implementation of the policy is set by the Decree of the President of the Republic of 4 April 2022 approving the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption (para 2.1.).

The annual evaluation report of implementation of the National Action Plan in 2022 was prepared at the beginning of 2023 and published online.

Element B – not compliant. Outcome indicators are not indicated in the 2022-2026 National Action Plan (see also element B of the benchmark 1.3.).

Element C – not compliant. Monitoring report does not include information on the amount of funding spent to implement policy measures.

Element D – compliant. The Commission on Combatting Corruption of Azerbaijan is entrusted to regularly update the public about the work done implementing the anti-corruption policy by the Decree of the President of the Republic of 4 April 2022 approving the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption (para 6.2.). The decree does not specify the meaning of term “regularly”. But the Authorities of Azerbaijan confirmed that annual monitoring reports about implementation of previous policy documents were published online in practice and will continue to be published while implementing the 2022-2026 National Action Plan.

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

Element	Compliance
A. An evaluation report is prepared at least at the end of each policy cycle	✓
B. An evaluation report is based on impact indicators	X
C. An evaluation report is published online	✓

Element A – compliant. The Action Plans on Open Government Partnership 2020-2022 preceding the current anti-corruption policy document was evaluated in 2022. The copy of the evaluation report was provided only in the national language. Therefore, the monitoring team was not able to assess the quality of the evaluation.

Element B – not compliant. The evaluation report is not based on the impact indicators as the Action Plans on Open Government Partnership 2020-2022 had no impact indicators set. The information about the evaluation report refers only to the evaluation if the measures were implemented or not.

Element C – compliant. The evaluation report was published online[5].

Benchmark 1.4.4.

Non-governmental stakeholders are engaged in the monitoring and evaluation:

Element	Compliance
A. Non-governmental stakeholders are invited to regular coordination meetings where the monitoring of the progress of the policy implementation is discussed	✓
B. A monitoring report reflects written contributions of non-governmental stakeholders	X
C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders	X

Element A – compliant. The Authorities of Azerbaijan provided examples of several meetings (online and in person) of state agencies and NGOs were the implementation of the previous and current anti-corruption policy documents was discussed in 2022. Alternative evaluation reports prepared by NGOs and other CSOs are considered while preparing governmental evaluation report.

The Decree of the President of the Republic of 4 April 2022 approving the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption recommends to the Commission on Combatting Corruption of Azerbaijan to take measures to involve civil society institutions in the process of evaluation of progress of implementation of the Action Plan (para 6.1.)

[5] http://www.commission-anticorruption.gov.az/view.php?lang=az&menu=49

Element B – not compliant. The Authorities of Azerbaijan informed that the Empowering Civil Society Organizations for Transparency (ECSOFT)[6] prepared a monitoring report regarding the implementation of the National Action Plan on 7 January 2022. The report was prepared in collaboration with several experts based on information provided by the government agencies responsible for the implementation of the National Action Plan. The report consisted of five sections: "Summary", "Objective of Monitoring", "İnformation about NAP", "Monitoring methodology", "Monitoring results", and "Overall outcomes and recommendations" and consisted of 61 page in total. The Authorities of Azerbaijan explained that “the report has been analysed by the government, certain conclusions have been reached, and the report has been widely used in preparing the country's report”.

The monitoring team welcomes this example of engagement of non-governmental stakeholders in monitoring. However, for the positive evaluation of the element B, the monitoring team would like to get few examples in monitoring language of written contributions of non-governmental stakeholders into the general report of monitoring of implementation of national anti-corruption policy document.

Element C – not compliant. The Authorities of Azerbaijan informed that the implementation of the National Action Plan for the Promotion of Open Government 2020-2022 was assessed as implemented at 82 percent by the Commission on Combatting Corruption while the representatives of CSOs evaluated implementation at 72 percent. However, no information showing that evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders was provided for the monitoring team in monitoring (English) language.

Assessment of non-governmental stakeholders

The non-governmental stakeholders were quite critical about the national anti-corruption policy. They think that the national anti-corruption documents do not address the essential corruption problems and are not supported by the true political will to reduce the level and risks of corruption. They also noted that there is no true dialog with the media, CSOs, citizens in the anti-corruption efforts. The public consultations involve the same NGOs which have a long-term experience of cooperation with the governmental agencies. these NGOs are not very critical about the insufficiency of the governmental efforts and do not want to raise nor discuss significant corruption problems. Participation and membership in the international anti-corruption initiatives do have some impact in the country. However, without true political will these initiatives and measures won’t reach the tangible result and positive changes. Non-governmental stakeholders noticed that high-level corruption now started to spread from the natural resources sectors to other branches of economy such as agriculture and these tendencies are not addressed by the national anti-corruption policy document.

[6] ECSOFT (2018–2022) is a USAID/Azerbaijan-funded project/initiative to support civil society organizations (CSOs) and Government of Azerbaijani (GoAz) agencies, enabling GoAz agencies to further improve their transparency and accountability by engaging with CSOs.

2 Conflict of interest and asset declarations

The laws of Azerbaijan provide very basic provisions for preventing conflict of interest of public officials in individual situations. Definitions of conflict of interests (COI) are scattered among various national legislative acts and codes of ethics. There is no universally applicable definition of COI covering all public officials. Definition of private interests is not established. The Law on Combating Corruption of Azerbaijan does not stipulate a duty of officials to report a COI nor a duty to abstain from decision-making until the COI is resolved. There is no general list of methods that can be used to resolve an ad hoc COI in Azerbaijan. There was no dedicated agency, unit, or staff to perform functions related to COI management. Sanctions were not routinely applied for COI related violations across public sector.

The scope of public officials declaring assets in Azerbaijan is quite broad. However, even for the categories of officials who are required to declare by the law, the disclosure system is not operational for lack of bylaws. A form of the assets' declaration is still not prepared and functional in Azerbaijan. Therefore, asset declaration is still not implemented in practice – a situation that exists since 2005.

Figure 2.1. Performance level for Conflict of Interest and Asset Declaration is low

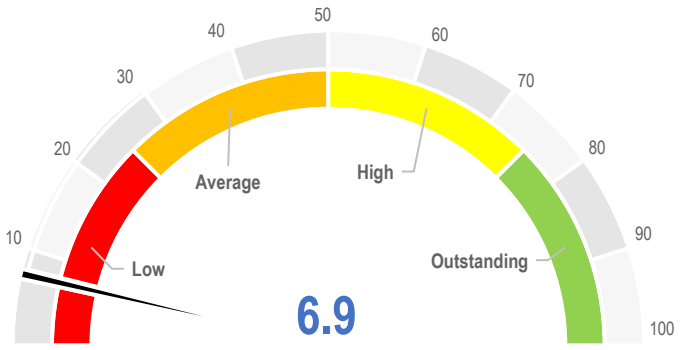
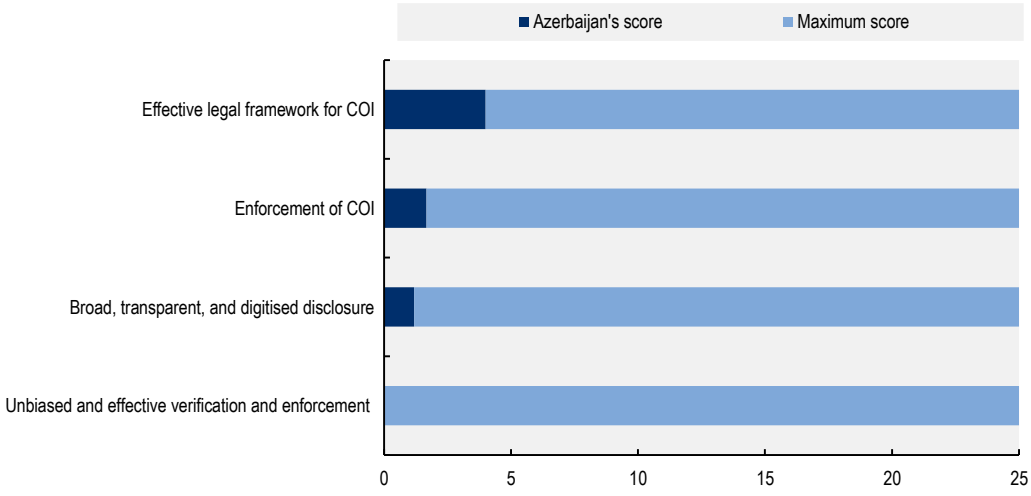


Figure 2.2. Performance level for Conflict of Interest and Asset Declaration by indicators



Indicator 2.1. An effective legal framework for managing conflict of interest is in place

Background

There is no universally applicable definition of COI covering all public officials. Elements relevant to the definition of COI are scattered among various national legislative acts (i. e. the Law on Combating Corruption and the Law on Rules of Ethical Conduct of Civil Servants) and number of the codes of ethics of the state agencies. The specialised Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan regulates some COI related issues in the activity of parliamentarians but do not provide COI resolution measures. The other specialised COI legislative acts do not provide comprehensive COI regulation either.

The Authorities of Azerbaijan informed that a dedicated legal act containing definitions and typologies of COI and other related issues is expected to enter into force in near future. The National Anti-Corruption Action Plan of 2022-2026 foresees implementation of this goal.

The State Examination Centre is the main institution overseeing observance of the Law on Rules of Ethical Conduct of Civil Servants in Azerbaijan. It is the responsibility of this Centre to receive complaints and information regarding violations of the mentioned Law, to conduct research on ethical conduct among civil servants, to compile recommendations and reports, to raise awareness, to review observance of standards of ethic. The Law on Rules of Ethical Conduct of Civil Servants stipulates that while appointed to the position, as well as during all the following period, civil servant shall be aware about the ethics rules, and relevant legal acts, including anti-corruption and prevention of conflict of interests related legal acts. Civil servant shall apply to direct or superior supervisor for any questions regarding the observance of these acts (Article 15.5). During the on-site visit, the representatives of Azerbaijan confirmed the above discussed COI related duties of the bodies/units and managers. But no further information was provided on how these legal provisions are implemented in practice.

Assessment of compliance

Benchmark 2.1.1.

The legislation extends to and includes a definition of the following concepts applicable to public officials, in line with international standards:

Element	Compliance
A. Actual and potential conflict of interest	X
B. Private interests that include any pecuniary and non-pecuniary advantage to the official, his or her family, close relatives, friends, other persons, or organisations with whom the official has personal, political, or other associations	X
C. An apparent conflict of interest	X

Element A – not compliant. The Law on Combatting Corruption is the main legal instrument regulating the activities of public officials to prevent corruption and eliminate conditions conducive to corrupt behaviour. It prohibits to be employed in direct subordination of a close relative (Article 7) and contains some restrictions on receiving gifts (Article 8) but does not define actual nor potential COI.

The Law “On rules of ethical conduct of the Members of the Milli Majlis” provides a definition of the COI applicable to MPs (Article 11: COI refers to the material and other benefits, privileges and concessions that the deputy himself or his close relatives can obtain within the framework of the exercise of his powers, as well as other interests that affect his interests or may affect the objective and impartial exercise of the powers of that deputy).

The legal provisions addressing some COI relevant elements of similar limited scope that are not in line with international standards are available in some other legal acts that were provided for the monitoring as examples of specialised COI regulations of specific professions or sectors, including the Law on Rules of Ethical Conduct of Civil Servants. There are no definitions of actual and potential COI applicable to public officials in the legislation of Azerbaijan that would be in line with international standards.

Element B – not compliant. The private interests are not defined nor regulated by the legislation of Azerbaijan.

Element C – not compliant. As concerns element C, there is no definition of apparent conflict of interest in the legislation of Azerbaijan. According to the Authorities of Azerbaijan, a dedicated legal act containing detailed definitions and typologies of conflict of interests and other related issues shall be prepared and adopted soon. The plan of implementation of this goal is reflected in the National Anti-Corruption Action Plan of 2022-2026.

Benchmark 2.1.2.

The legislation assigns the following roles and responsibilities for preventing and managing ad hoc conflict of interest:

Element	Compliance
A. Duty of an official to report COI that emerged or may emerge	X
B. Duty of an official to abstain from decision-making until the COI is resolved	X
C. Duties of the managers and dedicated bodies/units to resolve COI reported or detected through other means	X

Element A – not compliant. The Law on Rules of Ethical Conduct of Civil Servants stipulates that “Civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for his/her private interests” (Article 15.1.). In cases it might lead to contradiction between service duties and private interests of civil servant, he/she must inform about character and volume of COI interests when recruited to civil service (meaning that appointment in the situation of COI is allowed by the law) and during the office (Article 15.2.). This provision covers the duty to report the actual but not potential COI as required by the element A.

Element B – not compliant. The workability of the mentioned provisions of the rules is questionable because of the lack of definitions of COI and private interests. No duty to abstain from decision-making until the COI is resolved nor other methods to resolve COI situation are set by the law as required by the element B.

The Law on Rules of Ethical Conduct of Civil Servants is applicable only to the civil servants but not all the officials as required by the elements A and B. The Authorities of Azerbaijan explained to the monitoring team that similar provisions establishing the duty to report the COI are incorporated in the special codes of conduct of individual professions or sectors such as prosecutors, other law enforcement bodies, etc. The monitoring team could not analyse these specific regulations in detail as there was no general overarching provision transferring the duty to report COI from the Law on Rules of Ethical Conduct of Civil Servants to the special ethics regulations. It would not be efficient to attempt to review all the specialised ethics regulations in the country to confirm existence of such provisions especially as it would still lack duty to report the actual COI.

The duty to report a COI exists for members of Parliament. The Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan sets the essential rules of ethical behaviour for parliamentarians. The member of Parliament must inform the Disciplinary Commission of the Milli Majlis about the private interests when it may conflict with the official duties and request the opinion of the Disciplinary Commission.

Element C – not compliant. As concerns element C, no duty of managers and dedicated bodies or units to resolve COI is set in legislation of Azerbaijan. The Law on Rules of Ethical Conduct of Civil Servants stipulates that civil servant shall get his/her direct supervisor's opinion if he/she is not able to decide about acceptance of gift or hospitality (para 14.2.). The Authorities of Azerbaijan explained that the general duty

of the managers to ensure the ethical conduct of the subordinated employees is established by the law. However, it is not specified as the duty to resolve the COI.

In case of the parliamentarians, according to the decision of the Disciplinary Commission of the Milli Majlis, the deputy should refrain from speaking or participating in the voting on the issue of his interest. When resolving a conflict of interest, a deputy must always put the public interest before his own interests. The opinion of the Milli Majlis Disciplinary Commission on conflict of interest is published on the official website of the Milli Majlis (Article 11.2). Regardless of the requirements for the prevention of conflicts of interest defined in Article 11.2 of this Law, the deputy must disclose any interest that may arise in relation to the issue discussed before the meeting of the Milli Majlis, its committee and commission or during the public discussion. But specified provisions do not foresee any COI resolution measures. Therefore, it is not clear how these procedures are carried out in practice.

The Authorities of Azerbaijan informed that the position of the Ethic's Commissioner was introduced by the amendment to the law dated by 30 December 2022 (Article 21-1). The duties of the commissioner inter alia include the review of the appeals received from the civil servants and other individuals regarding violations of ethical conduct, to take the measures to prevent violations of ethics, and to inform the head of the state body about the violations of the rules of the ethical conduct. The monitoring team welcomed this information. Since these changes are outside the year covered by the monitoring, it will be assessed in the future monitoring.

Benchmark 2.1.3.

The legislation provides for the following methods of resolving ad hoc conflict of interest:

Element	Compliance
A. Divestment or liquidation of the asset-related interest by the public official	X
B. Resignation of the public official from the conflicting private-capacity position or function, or removal of private interest in another way	X
C. Recusal of the public official from involvement in an affected decision-making process	X
D. Restriction of the affected public official's access to particular information	X
E. Transfer of the public official to duty in a non-conflicting position	X
F. Re-arrangement of the public official's duties and responsibilities	X
G. Performance of duties under external supervision	X
H. Resignation/dismissal of the public official from their public office	X

Element A-H – not compliant. There is no precise scope (list) of the methods that can be used to resolve ad hoc COI in Azerbaijan. Fragmented COI rules with some methods for resolving COI are reflected in the legislation and number of ethical codes of various government agencies.

As an example, the Law "On rules of ethical conduct of the Members of the Milli Majlis" (Article 11.2) stipulates that a deputy shall not allow conflicts of interest while serving his or her term of office. Parliamentarians are required to report in two cases,(i) "in cases where there may be a conflict between the performance of official duties and the interests of a deputy, he/she shall inform the Disciplinary Commission of the Milli Majlis" and (ii) "a deputy must inform the chairman of the meeting orally of any potential COI that may arise on the subject of the topic discussed prior to his/her speech during a meeting of the Milli Majlis, its committee and commission or public discussion". In case (i) the Disciplinary

Commission shall provide its opinion to the parliamentarian. Two ways to resolve COI can be suggested to parliamentarian, “refrain from speaking on the issue of his interest or participating in the voting”. However, it does not fully cover the process on decision-making. Case (ii) does not foresee any COI resolution measures.

Benchmark 2.1.4.

The legislation provides for the following methods of resolving ad hoc conflict of interest:

Element	Compliance
A. Specific methods for resolving conflict of interest in the collegiate (collective) state bodies	x
B. Specific methods for resolving conflict of interest for top officials who have no direct superiors	x

Element A – not compliant. The authorities of referred to the Article 42.1 of the Law “On Administrative Proceedings” of Azerbaijan which envisages grounds for the recusal of a public official representing the interest of an administrative body in cases of COI. Under Article 42.2 of the mentioned Law, public officials have an obligation to recuse themselves if grounds established in the first paragraph of that article exist. If any of the grounds set by the law exist, any interested party in administrative proceedings may object to a public official or any member of the collegial body considering the case (Article 42.3). The monitoring team welcomes this information about some regulation of the recusal or initiation of recusal of member(s) of collegial body(-ies) in the administrative proceedings. However, it does not fully meet the requirements of the element A as the specific methods for resolving COI in the collegiate (collective) state bodies are not provided.

Element B – not compliant. There are no specific methods for resolving COI for top officials with no direct superiors set by the legislation in Azerbaijan as required under the element B except for the rules for members of parliament described above.

Benchmark 2.1.5.

There are special conflict of interest regulations or official guidelines for:

Element	Compliance
A. Judges	✓
B. Prosecutors	✓
C. Members of Parliament	✓
D. Members of Government	x
E. Members of local and regional representative bodies (councils)	✓

Element A – compliant. Special COI provisions regarding judges are included in the Constitution of Azerbaijan (Article 126, incompatibility of position with any other public, private, or political activity), the CPC (Article 103) and the Civil Procedure Code (Article 19) regarding recusal or withdrawal from hearing a case in the event of doubt of impartiality. The Code of Conduct for Judges (Article 7) stipulates that judge shall exclude any interference to his/her professional activity by relatives, friends, and familiars. If the

decision adopted by judge can touch the interests of family members and other relatives or any doubt his/her impartiality he/she shall disqualify himself/herself.

Element B –compliant. As concerns element B, there are similar provisions relating to prosecutors' COI in the Code of Criminal Procedure, the Code of Civil Procedure, the CC, the Code of Conduct for Prosecutors, and the "Rules on activity of the Prosecutor's Office" (e.g. Article 159.1: the Internal Inspections Department analyses and summarizes information on the prevention of COI in the activities of prosecutors, ensuring transparency (including property, income and financial obligations), corruption risks and corruption offenses, prepares proposals and recommendations to increase the effectiveness of the fight against corruption, informs the heads of relevant structures to take preventive measures).

Element C –compliant. As concerns element C, the Law "On rules of ethical conduct of the Members of the Milli Majlis" (Article 11.2) stipulates that a deputy shall not allow COI while serving his or her term of office. Parliamentarians are required to inform the Disciplinary Commission of the Milli Majlis about the COI. Deputy must also inform the chairman of the meeting orally of any potential COI that may arise about the topic discussed prior to his/her speech during a meeting of the Milli Majlis, its committee and commission or public discussion. The Law also provides for some of the resolution methods (see additional details above).

Element D – not compliant. In respect of element D, there are no special conflict of interest regulations or official guidelines for the members of Government.

Element E – compliant. As concerns element E, there are special COI regulation applicable to the district executive bodies and the municipalities operating in the cities and regions of Azerbaijan. The Rules of Ethical Behaviour of the Municipal Members stipulates that a member of the municipality should not allow conflicts of interest during his/her activity, he/she should not use his/her powers and duties for his/her personal interests (Article 11.1). The rules also stipulate that if proposal to a municipal member to move to another position can cause a COI, he/she should inform the municipal meeting about it (Article 11.2). The rules also provide restrictions on receiving gifts, prohibition of obtaining material or non-material benefits, privileges or benefits.

Indicator 2.2. Regulations on conflict of interest are properly enforced

Background

The Law on Combatting Corruption (Article 10.1) foresees a possibility of application of the sanctions with various severity, including the disciplinary, civil, administrative, or criminal liability, for the violation of anti-corruption restrictions, including some of the COI situations. However, there is no centralised information on sanctions for violations of COI rules. The Authorities of Azerbaijan informed that the statistics related to this issue are collected in separate fields.

Assessment of compliance

Benchmark 2.2.1.

Sanctions are routinely imposed on public officials for the following violations:

Element	Compliance
A. Failure to report an ad hoc conflict of interest	✓
B. Failure to resolve an ad hoc conflict of interest	X
C. Violation of restrictions related to gifts or hospitality	X
D. Violation of incompatibilities	X
E. Violation of post-employment restrictions	X

According to the general definitions applicable for this monitoring, “routinely imposed” means “applied or used systematically as a usual practice. The application or use is systematic when it includes at least 3 cases per year.” The country needs to provide at least 3 cases of sanctions imposed on public officials for the specific violations for each element A-E of the benchmark.

The Law on Combatting Corruption (Article 10.1) foresees possibility of application of sanctions with various severity, including disciplinary, civil, administrative or criminal liability, for violation of anti-corruption restrictions, including some of COI situations. Violation of ethical conduct rules shall be a ground for calling civil servant to the disciplinary responsibility (Law on Rules of Ethics Conduct of Civil Servants, Article 23.1.). However, there is no centralised information on sanctions for violations of COI rules or other anti-corruption restrictions applied. Statistics related to this issue are collected in separate fields. It was noted that in municipalities codes of ethical conduct, including serious violations of COI, have been violated 27 times in 2022. The collected documents have been forwarded to the appropriate investigation authorities for review. As a result of these materials, 12 criminal cases have been initiated.

Representatives of Azerbaijan pointed out several cases about failure to report an ad hoc COI (the service of 4 officials in the tax authorities were terminated by the orders of the Service, 1 public official was brought to disciplinary responsibility and a disciplinary measure of severe reprimand was applied) – element A - compliant; 1 case about failure to resolve an ad hoc conflict of interest (public official was reprimanded) – element B – not compliant; 1 case about violation of restrictions related to gifts or hospitality (public official was terminated) – element C – not compliant; 1 case about violation of incompatibilities (public official was brought to disciplinary responsibility and a disciplinary measure of severe reprimand was applied) – element D – not compliant.

Element E – not compliant. No cases about violation of post-employment restrictions were provided to the monitoring team.

Benchmark 2.2.2.

Sanctions are routinely imposed on high-level officials for the following violations:

Element	Compliance
A. Violation of legislation on prevention and resolution of ad hoc conflict of interest	X
B. Violation of restrictions related to gifts or hospitality	X
C. Violation of incompatibilities	X
D. Violations related to requirements of divesting ownership rights in commercial entities or other business interests	X
E. Violation of post-employment restrictions	X

Elements A-E – not compliant. The authorities did not provide information showing compliance with any of the elements of the benchmark.

Benchmark 2.2.3.

The following measures are routinely applied:

Element	Compliance
A. Invalidated decisions or contracts as a result of a violation of conflict-of-interest regulations	X
B. Confiscated illegal gifts or their value	X
C. Revoked employment or other contracts of former public officials concluded in violation of post-employment restrictions	X

Elements A-C – not compliant. The authorities did not provide information showing compliance with any of the elements of the benchmark.

Indicator 2.3. Asset and interest declarations apply to high corruption risk public officials, have a broad scope, and are transparent for the public and digitized

Assessment of compliance

Benchmark 2.3.1.

The following officials are required to declare their assets and interests annually:

Element	Compliance
A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies	X
B. Members of collegiate central public authorities, including independent market regulators and supervisory authorities	X
C. Head and members of the board of the national bank, supreme audit institution	X
D. The staff of private offices of political officials (such as advisors and assistants)	X
E. Regional governors, mayors of cities	X
F. Judges of general courts, judges of the constitutional court, members of the judicial governance bodies	X
G. Prosecutors, members of the prosecutorial governance bodies	X
H. Top executives of SOEs	X

Elements A-H – not compliant. List of the persons who are required to submit asset declarations is established by the Law on Combating Corruption (Article 2) and the Law on Approval of Rules for Submission of Financial Information by Public Officials (Articles 2 and 3) which establishes the reporting requirements for majority but not all officials mentioned in benchmark 3.1., namely: President of the Azerbaijan Republic, members of Parliament, members of government and their deputies, heads of central executive authorities and their deputies, regional heads, judges (but not all the members of the judicial governance bodies), prosecutors, chairman of the board of the National Bank, heads of state entities, enterprises.

Article 5 of the Law on Combating Corruption provides that public officials are required to disclose their assets. The Civil Service Law of Azerbaijan establishes a general duty of civil servants to submit annual declarations of income and assets, but not of interests. Interest disclosure is not yet established in Azerbaijan. The requirement provided for in the law is limited to declaration of participation in companies, funds and economic entities (the Law on Combatting Corruption, Article 5.1.4) and does not cover the entire range of other conflict of interest situations.

The staff of private offices of political officials (such as advisors and assistants), are not covered by the list of persons that are required to submit asset declarations. Representatives of Azerbaijan indicated that it should be considered that the assistants of the President of the Republic of Azerbaijan also hold the position of departments heads within the Administration of the President of the Republic. Furthermore, the Civil Service Law of Azerbaijan establishes a general duty for civil servants to submit annual declarations of income and assets (Article 18). Even considering this clarification, there is no private interest declaration in line with the benchmark and international standards in Azerbaijan.

Positions such as regional governors, mayors of cities do not exist in the Republic of Azerbaijan, but the list specified in the Law on Approval of Rules for Submission of Financial Information by Public Officials indicates the heads of executive authorities and other competent who are alternatives to these positions.

Despite all the above, the requirement to declare assets and income is not fully regulated even for the categories of officials who are required to declare by the law as the disclosure system is not operational for the lack of bylaws, namely the declaration form. Without the form, the officials covered by the law in Azerbaijan cannot be required to declare their assets.

Benchmark 2.3.2.

The legislation or official guidelines require the disclosure in the declarations of the following items:

Element	Compliance
A. Immovable property, vehicles and other movable assets located domestically or abroad	X
B. Income, including its source	✓
C. Gifts including in-kind gifts and payment for services and indicating the gift's source	X
D. Shares in companies, securities	✓
E. Bank accounts	X
F. Cash inside and outside of financial institutions, personal loans given	X
G. Financial liabilities, including private loans	✓
H. Outside employment or activity (paid or unpaid)	X
I. Membership in organizations or their bodies	X

The Law on Combating Corruption (Article 5.1.) establishes the scope of asset disclosure. A – not compliant. Just taxable assets must be declared (this includes vehicles as required by the benchmark 3.2.) but not all the immovable property and movable assets located domestically or abroad as required by element. B – compliant. Income, indicating the source, type and amount shall be declared (5.1.1.). C F, H, I – not compliant: law does not require disclosure of gifts; cash (inside and outside of financial institutions), personal loans given; outside employment or activity (paid or unpaid); membership in organizations or their bodies. D – compliant: public officials shall submit information about their participation in the activity of companies, funds and other economic entities as a shareholder or founder, on their property share in such enterprises (para 5.1.4.), securities and other financial means (5.1.3). E – not compliant: public officials are obliged to declare deposits, securities and other financial resources/means in credit organisations. This covers the bank accounts as required by the element E and accounts in other credit organisations. However, it is not clear if the disclosure if implemented would cover bank accounts not only owned but also controlled by the declarant and accounts opened in banks abroad as indicated in the IAP 5th round Guide. The Authorities of Azerbaijan believe that the regulations of the law would be implemented applying the broad understanding. However, monitoring team does not have any ground to expect expanding application of wording of the law, especially considering the principle of legal certainty that is applicable in the administrative law. G – compliant: disclosure of financial liabilities is required for "a debt exceeding five thousand five hundred manats and financial obligations (i.e. loans) and other [material] obligations of property nature exceeding one thousand one hundred manats"). It is not clear if the private loans are included as required by the element. However, there is no way to verify it as the disclosure is still not implemented in the country. The monitoring team assumes that the private loans would be covered for the

disclosure since the law contains the common term “debt” which usually has the broader meaning than the terms “loan” or “credit” which are more traditional in the terminology of credit organisations.

Benchmark 2.3.3.

The legislation or official guidelines contain a definition and require the disclosure in the declarations of the following items:

Element	Compliance
A. Beneficial ownership (control) of companies, as understood in FATF standards, domestically and abroad (at least for all declarants mentioned in Benchmark 3.1.), including identification details of the company and the nature and extent of the beneficial interest held	X
B. Indirect control (beneficial ownership) of assets other than companies (at least for all declarants mentioned in Benchmark 3.1.), including details of the nominal owner of the respective asset, description of the asset, its value	X
C. Expenditures, including date and amount of the expenditure	X
D. Trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust’s settlor, trustees, and beneficiaries	X
E. Virtual assets (for example, cryptocurrencies), including the type and name of the virtual asset, the amount of relevant tokens (units), and the date of acquisition	X

Elements A-E – not compliant. Scope of the asset disclosure as stipulated by the Law on Combating Corruption (Article 5.1) does not include information on beneficial ownership of companies. The Law requires disclosure of information on participation in the activity of companies, funds and other economic entities as a shareholder or founder on their property share in such enterprises. Ultimate indirect ownership or control is not covered by the legislation. Expenditures, including date and amount of the expenditure; trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust’s settlor, trustees, and beneficiaries; virtual assets are not covered by the law.

Benchmark 2.3.4.

	Compliance
The legislation or official guidelines require the disclosure in the declarations of information on assets, income, liabilities, and expenditures of family members, that is, at least spouse and persons who live in the same household and have a dependency relation with the declarant	X

The Law on Approval of Procedures for Submission of Financial Information by Public Officials covers family members who are defined as spouse, parents and children living together (Article 5.2). Asset declaration of declaring person include data on financial information of spouse, parents and children living together of the public official, but does not cover other dependents of the declarant living in the same household as the declarant. Representatives of Azerbaijan ensured that in the national legislation, it has

been specified that, without distinction, the obligations stated in Article 5 of the Law on Combating Corruption apply to both the declaring person and his family members. However, legal requirements for discloser in Azerbaijan are not broad enough and still do not cover fully all the assets, liabilities, expenditures (see also the benchmark 3.2).

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	X

In 2022, there was no online platform for submission of assets and interests declarations in Azerbaijan. The Authorities of Azerbaijan informed that it is foreseen to establish a comprehensive system of electronic asset disclosure in the framework of the 2022-2026 National Action Plan to Strengthen the Fight Against Corruption.

Benchmark 2.3.6.

Information from asset and interest declarations is open to the public:

Element	Compliance
A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect the privacy and personal security	X
B. Information from asset and interest declarations is published online	X
C. Information from asset and interest declarations is published online in a machine-readable (open data) format	X
D. Information from asset declarations in a machine-readable (open data) is regularly updated	X

Elements A-D – not compliant. Asset declarations are private and are not publicly available to ensure the protection of private information (Law on Approval of Procedures for Submission of Financial Information by Public Officials, Article 9.1.). Interest disclosure is not established in Azerbaijan.

Benchmark 2.3.7.

Functionalities of the electronic declaration system include automated cross-checks with government databases, including the following sources:

Element	Compliance
A. Register of legal entities	X
B. Register of civil acts	X
C. Register of land titles	X
D. Register of vehicles	X
E. Tax database on individual and company income	X

Elements A-E – not compliant. The electronic asset declaration system is not established in Azerbaijan.

Indicator 2.4. There is unbiased and effective verification of declarations with enforcement of dissuasive sanctions

Background

There is no dedicated agency, unit, or staff responsible for the verification of declarations. Verification is assigned to several agencies meaning that the control system is decentralised and therefore difficult to supervise and evaluate. Within such agencies, there is no dedicated staff responsible only for the verification. Asset disclosure and verification of declarations was not implemented in practice in Azerbaijan in 2022.

Assessment of compliance

Benchmark 2.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency, unit, or staff and is implemented in practice:

Element	Compliance
A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%) OR	0%
B. Verification of declarations is assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations and is responsible only for such verification and not for other functions (100%)	

Since there is no dedicated agency or unit for the verification of declarations in Azerbaijan, the element A of the benchmark 4.1. is applicable for the country.

The asset declaration system is decentralised in Azerbaijan. Asset declarations shall be collected internally at the state agencies. Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 8) establishes that authorities that collect (receive) asset declarations also verify them.

Article 3 defines the authority responsible for collecting declarations. The authority receiving the financial declaration is obligated to review its accuracy and has the right to conduct an initial investigation based on the information provided in the declaration. For the mentioned purpose, authorities receiving the financial declarations may request clarifications and additional documents from the declarant, but the law stipulates no other powers. It is not clear if authorities receiving asset declarations are mandated to conduct also verification besides the review of the accuracy of the data provided.

The Commission on Combating Corruption carries out collection and verification of declarations in respect of high-level officials listed in Article 3 of the Law. Members of the Milli Mejlis shall submit their relevant financial information to the authority identified by the Milli Mejlis (Article 3.2); persons elected to local self-management authorities shall submit their financial information to relevant financial authorities, and persons implementing administrative and supervisory authorities in the local self-management authority shall submit to the respective self-management authority (Article 3.4.); other public officials shall submit their financial information to the relevant financial authority determined by heads of their respective state authorities (Article 3.5.). It is not clear what are the “relevant financial authorities” as the system is not operating in practice.

There is no evidence that there is specialized staff that deals exclusively with the verification of declarations and does not perform other duties at all the state agencies. Besides, due to the absence of bylaws, the disclosure system is not operational. Therefore, A is not compliant.

Benchmark 2.4.2.

Verification of asset and interest declarations, according to legislation and practice, aims to detect:

Element	Compliance
A. Conflict of interest (ad hoc conflict of interest or other related situations, for example, illegal gifts, incompatibilities)	X
B. False or incomplete information	X
C. Illicit enrichment or unjustified variations of wealth	X

The law does not require to verify for the signs of COI or illicit enrichment which makes elements A and C not compliant.

Element B – not compliant. As concerns element B, the Law on Combating Corruption requires to check only accuracy of asset and interest declarations (i. e. failure, without any reasonable excuse, to timely submit the information pointed out in this Article, or the wilful submission of incomplete or distorted information) may give rise to disciplinary responsibility of those persons (Article 6.3.). Though verification of the accuracy of the declarations is required in the law but it’s not working in practice.

Benchmark 2.4.3.

A dedicated agency, unit, or staff dealing with the verification of declarations has the following powers clearly stipulated in the legislation and routinely used in practice:

Element	Compliance
A. Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities	X
B. Have access to registers and databases which are held/administered by domestic public authorities and are necessary for the verification	X
C. Access information held by the banking and other financial institutions: with prior judicial approval (50%) or without such approval (100%)	X
D. Have access to available foreign sources of information, including after paying a fee if needed	X
E. Commissioning or conducting an evaluation of an asset's value	X
F. Providing ad hoc or general clarifications to declarants on asset and interest declarations	X

Elements A-F – not compliant. Law on Approval of Procedures for Submission of Financial Information by Public Officials stipulates that authorities receiving the financial declarations may conduct an initial investigation for the purpose of verification of data that declarations contain (Article 9). During such investigations, authorities receiving the financial declarations are entitled to take necessary actions to detect differences between currently submitted declarations and declarations submitted previously. For the mentioned purpose, authorities receiving the declarations may request clarifications and additional documents from the declarant (verbal or written clarifications) but not from other individuals or entities (Article 8.3.). The Law stipulates no other powers. No evidence was provided by the country that a dedicated agency, unit or staff dealing with the verification of declarations has powers specified in the benchmark clearly stipulated in the legislation and routinely used in practice.

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

Element	Compliance
A. Declarations of persons holding high-risk positions or functions	X
B. Based on external complaints and notifications (including citizens and media reports)	X
C. Ex officio based on irregularities detected through various, including open sources	X
D. Based on risk analysis of declarations, including based on cross-checks with the previous declarations	X

Elements A-D – not compliant. The system of verifying declarations was not operational in Azerbaijan in 2022.

Benchmark 2.4.5.

The following measures are routinely applied:

Element	Compliance
A. Cases of possible conflict of interest violations (such as violations of rules on ad hoc conflict of interest, incompatibilities, gifts, divestment of corporate ownership rights, post-employment restrictions) detected based on the verification of declarations and referred for follow-up to the respective authority or unit	X
B. Cases of possible illicit enrichment or unjustified assets detected based on the verification of declarations and referred for follow-up to the respective authority or unit	X
C. Cases of violations detected following verification of declarations based on media or citizen reports and referred for follow-up to the respective authority or unit	X

Elements A-C – not compliant. The disclosure and verification system was not operational in Azerbaijan in 2022.

Benchmark 2.4.6.

The following sanctions are routinely imposed for false or incomplete information in declarations:

Element	Compliance
A. Administrative sanctions for false or incomplete information in declarations	X
B. Criminal sanctions for intentionally false or incomplete information in declarations in cases of significant amount as defined in the national legislation	X
C. Administrative or criminal sanctions on high-level officials for false or incomplete information in declarations	X

Elements A-C – not compliant. Law on Combating Corruption establishes responsibility for violation of requirements of financial nature (Article 6). Failure to comply with the requirements envisaged in this Law, including failure without a reasonable excuse to submit timely information required, wilful submission of incomplete or distorted information can result in disciplinary responsibility (Article 6.3). The Commission on Combating Corruption may publish “in the official press information of the persons who fail to comply” with the requirement to submit financial information (asset declaration) (Article 6.4.).

The Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 10) allows for the criminal, administrative and disciplinary liability for the violation of the said procedures. However, relevant offences are not included in the criminal and administrative violations code.

Representatives of Azerbaijan noted that it is planned to incorporate the special norms into the Code of Administrative and Criminal Offences. It is planned that it will envisage administrative and criminal liabilities for public officials in the case of non-submission, late submission, or false statements in declarations.

There was no practice of application of any sanctions because asset disclosure system was not operational in Azerbaijan in 2022.

Box 2.1. Good practice – Guidelines on "Conflict of interest"

In 2022, the Department of Organizational and Information Support of the Anti-Corruption Directorate with the Prosecutor General of Azerbaijan prepared guidelines "Conflict of interest". The guidelines have been prepared aiming to help to detect and manage the COI situations timely, to eliminate gaps in legislation and existing difficulties in application of the preventive measures in practice. Guidelines were disseminated among relevant authorities.

The guidelines cover many important issues, including a definition of conflict of interest, causes and types of COI, principles and methods related to the identification, management, and resolution of conflict of interest, responsibility for violations of COI rules and analysis of applicable sanctions. Proposals to improve national COI related legislations were presented based on the analysis of the relevant recommendations and guidelines of the international organizations and good practices of several countries. During the on-site visit the representatives of Azerbaijan noted that guidelines were very helpful during the trainings for public officials due to the lack of comprehensive national legal regulation in this area.

Assessment of non-governmental stakeholders

According to non-governmental stakeholders, the legal framework for COI management is not effectively applied in practice in Azerbaijan. Several recent examples of real cases of the conflict of interest in various areas were presented during the discussion (for example, a public official holding different decision-making roles both in the supplier side and in the procuring entity's side, but public official declined to recuse himself). No COI prevention nor sanctions for violations are applied in practice.

Non-governmental stakeholders noted that the main problem in the practical application of concepts of actual and potential conflict of interest, private interest is the lack of the relevant knowledge and awareness of public officials. Public officials should be trained continuously on anticorruption policies and integrity issues.

Legal regulation on financial disclosure of public officials was adopted 17 years ago, but still not applied in practice. Non-governmental stakeholders indicated that it is necessary to adopt comprehensive COI and asset disclosure legislation based on the international standards and best practices considering the reality and conditions in the country. Hopefully it will be implemented as planned in the anti-corruption programme of 2022-2026.

3 Protection of whistleblowers

In Azerbaijan, there is no comprehensive whistleblower protection framework, including a dedicated law. The Law on Combating Corruption entitles any individual to report corruption, regardless of whether the information relates to corruption at the workplace of a whistleblower or beyond. Two articles in the Law cover a few elements of whistleblower protection including prohibition on retaliation against whistleblowers at their workplace for reporting corruption, and for responsibility of an employer to prove in administrative process or before a general court that the measures of responsibility imposed on an employee is not related to earlier reporting on alleged corruption. However, the reversed burden of proof does not apply to cases where the whistleblower has been subjected to forms of retaliation that are not regarded as measures of responsibility by the legislation. The law does not explicitly provide for assistance to whistleblowers who need legal counselling or representation at the public expense due to suffered retaliation at their workplace. Protection of whistleblowers from more serious forms of illegal influence (threats of violence or property destruction, etc.) is covered by the legislation on the protection of individuals involved in criminal proceedings. The motion to initiate application of protection measures must come from a whistleblower. The authorities are not entitled to react pro-actively. The absence of relevant case law precludes the monitoring team from drawing conclusions on the effectiveness of the current legal framework and raises serious concerns about general lack of trust in the effectiveness of current whistleblower protection framework.

Figure 3.1. Performance level for Protection of Whistleblowers is average

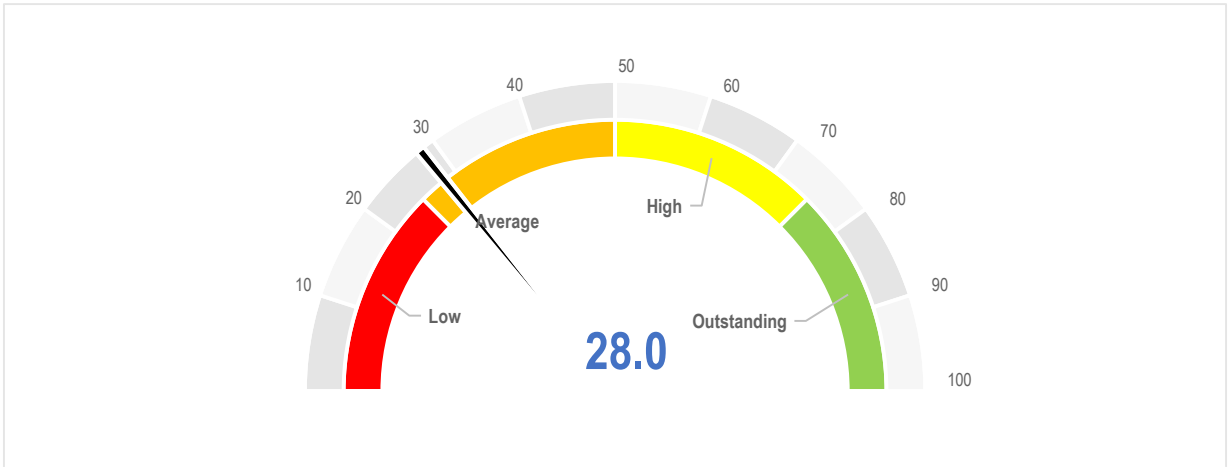
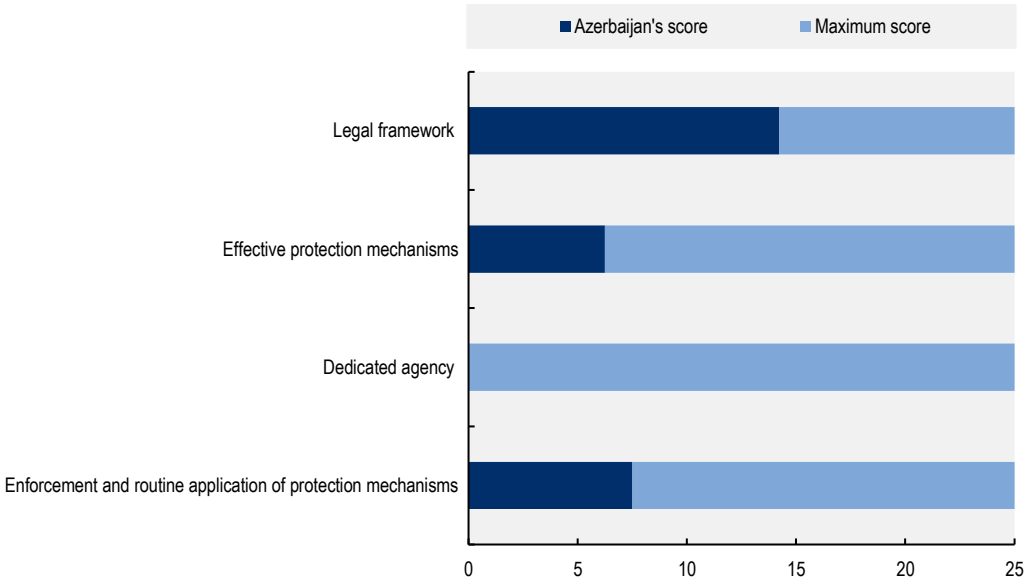


Figure 3.2. Performance level for Protection of Whistleblowers by indicators



Indicator 3.1. The whistleblower's protection is guaranteed in law

Background

The legal framework for whistleblower protection is based on Articles 11-1 and 11-2 of the Law on Combating Corruption (LCC), which provide for setting up internal whistleblowing channels in the public sector and protection measures that are not comprehensive. More provisions that are not whistleblower-specific but still applicable to whistleblower protection are included in other pieces of legislation: the Civil Code, the Law on Protection of Persons Participating in Criminal Proceedings, Code of Administrative Offences, Criminal Code, and others.

Assessment of compliance

Benchmark 3.1.1.

The law guarantees the protection of whistleblowers:

Element	Compliance
A. Individuals who report corruption-related wrongdoing at their workplace that they believed true at the time of reporting	✓
B. Motive of a whistleblower or that they make a report in good faith are not preconditions to receiving protection	x
C. If a public interest test is required to qualify for protection, corruption-related wrongdoing are considered to be in public interest, and their reporting qualifies for protection by default	✓

Note: Corruption-related wrongdoing means that the material scope of the law should extend to: 1) corruption offences (see definition in the introductory part of this guide); and 2) violation of the rules on conflict of interest, asset and interest declarations, incompatibility, gifts, other anti-corruption restrictions. At their workplace means that a report is made based on information acquired through a person's current or past work activities in the public or private sector. As such, citizen appeals are not covered.

According to the LCC, the protection extends to individuals reporting corruption-related offences that are broken down into corruption offences themselves and offences conducive to corruption. Articles 9.2 and 9.3 of the LCC provide a list of activities that fall under each of two types of corruption-related offences. The concept of corruption is defined under Article 1 of the LCC. The concept of corruption-related offences is broad enough to conform with the definition of "corruption-related wrongdoing".

LCC establishes that any person can provide information on corruption offences. It follows that every person reporting corruption-related offences is entitled to the protection envisaged by the law. The wording "by any person" extends both to the situations in which the reporting concerns information obtained in a professional context and beyond that. In addition, LCC provides that the public sector must establish internal reporting channels with the possibility for employees to use them for reporting. From these provisions, it can be deduced that protection extends to individuals (employees) reporting corruption-related offences at their workplace. Thus, the element "at their workplace" is satisfied.

LCC (Article 11-2.6) disqualifies individuals from receiving protection for reporting knowingly false information. The LCC does not further clarify the content and boundaries of this concept; there is neither relevant case law nor guidelines. The monitoring team attributes to the concept of "knowingly" its generally accepted meaning (acting with awareness of the nature of his/her conduct). In the opinion of the monitoring

team, other forms of subjective assessment of the plausibility of the reported information by a whistleblower satisfy the element of "believed true" under this benchmark.

Thus, the law satisfies the requirement of the benchmark to guarantee protection to whistleblowers who report corruption-related wrongdoings that they believed to be true at the time of reporting. According to authorities, the whistleblower qualifies for protection even if the investigation does not prove the offence. Though, there is no case law supporting this.

As regards element B, the LCC (Article 11-2.6) disqualifies individuals from receiving protection for reporting for the purpose of illegally obtaining material and other benefits, privileges and concessions for themselves or other persons. This is a disqualifying element since it relates to an individual's motives. There is no case law so far to examine the practical application of this provision.

Element C is compliant since no public interest is required in the national legislation.

Benchmark 3.1.2.

Whistleblower legislation extends to the following persons who report corruption-related wrongdoing at their workplace:

Element	Compliance
A. Public sector employees	✓
B. Private sector employees	✓
C. Board members and employees of state-owned enterprises	✓

Note: Whistleblower legislation means all legal provisions defining whistleblowing, reporting procedures and protections provided to whistleblowers.

"Employees" means persons qualified as employees under national legislation. According to The Labour Code of the Republic of Azerbaijan (Article. 3(2)), the employee is defined as an individual who has entered into an employment agreement (contract) with an employer and who works in an appropriate workplace for pay.

The LCC (Article 11-1) explicitly extends to employees of state and municipal bodies, legal entities and budget organizations owned by the state or municipality or whose controlling share belongs to the state or municipality.

Whistleblower protection provisions lean more on the public sector bodies, enterprises, and organizations that are under obligation to establish internal reporting channels and ensure some protection for whistleblowers. The LCC doesn't impose such obligations on the private sector. Private sector employees can report through external channels, which aren't explicitly provided in the legislation. Private sector employees can benefit from some instruments of whistle-blower protection, like protection from threats, harassment, material or moral damage, insults, and humiliation of honour or dignity to themselves or to a close relative. They can also qualify for protection stipulated by the Law "On State Protection of Persons Participating in Criminal Proceedings". The LCC is not that straight-forward if private sector whistle-blowers are eligible to retain their identity undisclosed after reporting or to enjoy the rights that an employer must justify that sanctions imposed on the employee arise from circumstances established by law and are not relevant to the information on corruption offenses. There is no case law to test the scope of the implementation of relevant provisions. The monitoring team concludes that whistleblower legislation extends to private sector employees, though there are concerns they might not benefit from the same level of protection as public sector employees do.

Board members of state-owned enterprises are not explicitly covered by the whistleblower protection legislation. Though, they fall under the broader concept of "the person providing information on corruption-related offenses" (LCC, Article 11-2), they thus qualify for whistleblower protection.

Benchmark 3.1.3.

Element	Compliance
Persons employed in the defence and security sectors who report corruption-related wrongdoing benefit from equivalent protections as other whistleblowers	✓

According to Article 11.-1.1 of LCC, information on corruption offenses may be provided by any person. Legislation does not exclude defence and security sector employees from the whistleblower protection.

Benchmark 3.1.4.

Element	Compliance
In administrative or judicial proceedings involving the protection of rights of whistleblowers, the law regulating respective procedure puts on the employer the burden of proof that any measures taken against a whistleblower were not connected to the report.	x

Article 11-2.5 of the LCC provides that in the event of a violation of the requirements of Articles 11-1 and 11-2, which include the rights of a whistleblower, the person reporting corruption-related offences may appeal administratively and (or) may appeal to the court. In addition, Article 11-2.4 of the LCC establishes that an enterprise or organization imposing measures of responsibility on an employee who has provided information on corruption offences must justify that they arise from circumstances established by law and are not relevant to the information on corruption offenses. Article 187(4) of the Labour Code provides the same guarantees for a reporting employee. Both the LCC and the Labour Code apply the reverse burden of proof only in cases where a whistleblower is subject to measures of responsibility imposed by the employer, that is, in the disciplinary proceedings only. On the face of it, the reverse burden of proof is not applicable in the event of a whistleblower appealing retaliation that does not qualify as a measure of responsibility under legislation.

Benchmark 3.1.5.

The law provides for the following key whistleblower protection measures:

Element	Compliance
A. Protection of whistleblower's identity	✓
B. Protection of personal safety	✓
C. Release from liability linked with the report	X
D. Protection from all forms of retaliation at the workplace (direct or indirect, through action or omission)	X

Pursuant to LCC (Article 11-2.1), If the person providing information on corruption-related offenses does not want to be disclosed, his/her confidentiality is ensured. Whistleblower's identity could be disclosed with the written consent of the person reporting the corruption offence.

The legislation provides a correlative sanction for violating the confidentiality of a whistleblower's identity. According to the provisions of the Code of Administrative Offences and the CC, the breach of confidentiality of a whistle-blower may lead to administrative or criminal liability, depending on the status of the person who is liable for the breach.

As concerns element B, according to the Monitoring Guide, protection of personal safety means that the law provides for personal protection measures in cases where a reporting person's life or safety are in danger. Provision of such protection should not be linked to a criminal or other proceeding. Witness protection regimes or provisions on the protection of collaborators of justice will be sufficient to meet the requirements of the benchmark only if such protection measures explicitly extend to whistleblowers who do not have the status of witness or another status in a criminal or other proceeding.

The LCC (Article 11-2.3) provides that if there is a real reason to fear that the person who reported the corruption offence or his close relative will be threatened with death, violence, destruction, or damage to his property, based on the applicant's request to the prosecutor's office, security measures shall be applied in a manner provided by the law "On State Protection of Persons Participating in Criminal Proceedings". Thus, the primary law provides for protection of personal safety in cases where a reporting person's life or safety are in danger. The LCC does not require a whistleblower to have a status in a criminal or other proceeding as a precondition for receiving protection. The Law "On State Protection of Persons Participating in Criminal Proceedings" (Article 7) provides for a range of security measures.

In discussions with the authorities, the monitoring team raised its concerns that whistleblowers who do not have status in criminal proceedings might not qualify for protection due to the scope of the law "On State Protection of Persons Participating in Criminal Proceedings" (Articles 1(1) and 3) that extends the application of the law only to persons participating in criminal proceedings. However, the authorities explained that Article 11-2.3. of the LCC was endorsed long after the law "On State Protection of Persons Participating in Criminal Proceedings" came into force, extending its scope to all whistleblowers irrespective of their participation in criminal proceedings. In addition, according to the rules of legal interpretation, Article 11-2.3. of the LCC is considered a special and more recent legal provision in relation to general and older legal provisions of the law "On State Protection of Persons Participating in Criminal Proceedings". Given that, Article 11-2.3. has a legal primacy over Articles 1(1) and 3 of the law "On State Protection of Persons Participating in Criminal Proceedings". Thus, Azerbaijan is compliant under element B.

Element C is not compliant for the following reasons: according to the Guide the law should explicitly establish that a whistleblower is not subject to criminal, civil, administrative or labour related liability for making a report (e.g., while getting access to the information that is the reason of the report or securing the proof of such information or other fact, etc.). In the legislation of Azerbaijan, there is no explicit release from these types of liability regarding whistleblowers. In the absence of the explicit release from liability linked to the report, the requirements of the benchmark's element C are not satisfied.

As concerns element D, the LCC provides protection from the following forms of retaliation at the workplace: threats, harassment, material or moral damage, insults and threats, and humiliation of honour or dignity of a whistleblower or his / her close relative (Article 11-2.2). The range of forms of retaliation that a whistleblower is protected from is rather wide, though in the absence of case law, it is not clear if the mentioned provision provides protection from any act or omission that disadvantages a whistleblower at the workplace because of a report, like denying additional discretionary payments awarded to other employees under equal circumstances.

Benchmark 3.1.6.

The law provides for the following additional whistleblower protection measures:

Element	Compliance
A. Consultation on protection	X
B. State legal aid	X
C. Compensation	X
D. Reinstatement	✓

According to authorities, there are no legal provisions in the legislation that entitle whistleblowers to consultations on protection. However, according to the statistics, in 2022, the authorities provided 30 individual consultations to people reporting corruption.

Element B is not compliant since, pursuant to Article 61 of the Constitution, everyone has the right to receive qualified legal assistance. In specific cases envisaged by legislation, legal assistance shall be provided free of charge, at the expense of the state. The “Law on Lawyers and Legal Practice” clearly specifies the types of individuals who may benefit from free legal assistance in Article 20.1 (Providing legal assistance at the expense of the state); the article does not explicitly provide that whistleblowers may benefit from legal aid at the expense of the state.

As concerns element C, the LCC (Article 11-2.5) states that in case of violation of the requirements of Article 11-2 (referring to state protection of a person providing information on corruption offences) by departments, enterprises, or organizations, authorized structural units and bodies specialized in combating corruption, the person reporting corruption-related offences may appeal administratively and (or) may appeal to the court. The authorities noted that guarantees for whistleblowers under Article 11-2.5 extend to the private sector as well and referred to Article 3.1 of the Labour Code, explaining the concept of an enterprise. The monitoring team does not share the same view. The meaning of enterprise for purposes of LCC is explained under Article 11-1.2, which explicitly attributes it to the public sector. The monitoring team concludes that a whistleblower's right to compensation does not explicitly extend to the private sector and therefore is limited and insufficient.

As part of an appeal under Article 11-2.5 of the LCC, a person can claim compensation. In addition, according to Articles 21 and 23 of the Civil Code, any person can claim compensation for damage (expenses incurred). Moral compensation resulting from the protection of honour, dignity and business

reputation is covered by Article 23. There is no case law confirming that the Civil Code remedies are applicable to whistleblowers, and the mentioned provision would be applicable to compensation claims either.

Element D is compliant. According to the monitoring Guide, “reinstatement” means that the law provides this legal remedy in a court of law when a whistleblower is subject to dismissal, transfer, demotion, or restoration of a cancelled permit, license or contract due to having made a report on corruption-related wrongdoing. There are no whistleblower-specific provisions granting whistleblowers reinstatement in Azerbaijan. Though, whistleblowers may utilize general legal provisions in this respect. A whistleblower can seek reinstatement in court in cases of illegal dismissal based on the Labour Code (Articles 70 and 74). The Government claims that seeking reinstatement after transfer or demotion can be based on Article 16 of the Labour Code, which prohibits any discrimination as well as the determination of privileges or limitations of rights at the workplace based on factors not related to the results of the employee's work performance. It can be questioned if the transfer and demotion of an employee due to his/her earlier whistleblowing would qualify as discrimination under the Article 16 of the Labour Code, and filing a respective complaint in court of law would lead to actual reinstatement.

The Government also explained that seeking restoration of a cancelled permit or a license could be based on Article 26.4 of the law “On Licenses and Permits”, while seeking restoration of a cancelled contract is in the domain of civil law.

While the applicability of the mentioned provisions to the reinstatement claims of whistleblowers has to be tested in practice, Azerbaijan is recommended to endorse legal provisions that explicitly provide for reinstatement as a whistleblower's protection measure.

Indicator 3.2. Effective mechanisms are in place to ensure that whistleblower protection is applied in practice

Assessment of compliance

Benchmark 3.2.1.

The following reporting channels are provided in law and available in practice:

Element	Compliance
A. Internal at the workplace in the public sector and state-owned enterprises	✓
B. External (to a specialized, regulatory, law enforcement or other relevant state body)	✓
C. Possibility of public disclosure (to media or self-disclosure e.g., on social media)	X
D. The law provides that whistleblowers can choose whether to report internally or through external channels	✓

The LCC provides legal grounds for internal reporting at the workplace in the public sector (Article 11-1). State and municipal bodies, legal entities and budget organizations (hereinafter – departments, enterprises and organizations) owned by the state or municipality or the controlling share of which belongs to the state or municipality are obliged to create internal reporting channels for their employees. An authorized official or a structural unit must be appointed to handle information on corruption-related offences submitted by employees of respective departments, enterprises and organizations.

According to the authorities, although statistics on whistleblower reports are not routinely collected in a centralized manner, they have requested and received replies from departments, enterprises, and organizations regarding the presence of internal reporting channels in all public sectors. The authorities claim that internal reporting channels are available in practice and can be used by whistleblowers to make reports.

According to authorities, in 2022, 50 whistleblower reports were received through internal reporting channels in the public sector.

In respect of element B, “external channels” mean that the law designates at least one public sector body to receive reports of corruption-related wrongdoing that persons covered under whistleblower legislation may report to outside their place of work. It is possible for whistleblowers to report corruption-related offences to the competent law enforcement agency - the Directorate (Article 11-1 of the Prosecutor's Office Act), as well as to investigation and prosecution bodies. Those bodies must ensure that this information is received, recorded and the relevant measures as provided by the law are implemented.

The authorities stated that corruption-related offences may be reported through hotlines, like the 24/7 “161-Hotline” run by the Directorate and the PGO’s hotline, but these are not dedicated external whistleblowing hotlines and therefore cannot be recognized as external reporting channels. Such evaluation is supported by the fact that, in 2022, 5108 reports were received on “161-Hotline”, though there are no statistics on how many of them were whistleblower reports.

The monitoring team concludes that, though whistleblowers may report their allegations to law enforcement agencies, this is not sufficient to satisfy the requirement under this benchmark.

Element C is not compliant. The legislation does not recognize as whistleblowers individuals reporting in the media allegations of corruption-related wrongdoings at their workplace. Consequently, the legislation is silent on providing whistleblower protection to such individuals. An employee who blows the whistle in the media about a corruption-related wrongdoing at his/her workplace may qualify for whistleblower protection subject to being involved in a criminal proceeding, e.g., as a witness, but this is not sufficient to satisfy requirements under this benchmark.

The authorities state that it is quite common to report corruption on social media (Facebook, Twitter), though no supporting evidence was provided; therefore the monitoring team cannot confirm that. Moreover, the monitoring team cannot verify if any of the disclosures in the media would qualify as a whistleblower report, and if individuals who made these reports were granted whistleblower protection available under the legislation.

Element D is compliant. The LCC mentions the availability of internal and external reporting channels. The legislation does not restrict whistleblowers' choices between available reporting channels.

Benchmark 3.2.2.

	Compliance
There is a central electronic platform for filing whistleblower reports which is used in practice	X

To meet the benchmark, the central electronic platform may, for example, provide the following functionalities: the collection, storage, use, protection, accounting, search, analysis of whistleblower reports, online data exchange with the whistleblower; anonymous reporting; the status of the report or

feedback provided to the whistleblower; and the collection of whistleblower reports received by authorities acting as internal or external channels.

There is no central electronic platform for filling out whistleblower reports in Azerbaijan.

Benchmark 3.2.3.

Anonymous whistleblower reports:

Element	Compliance
A. Can be examined	X
B. Whistleblowers who report anonymously may be granted protection when they are identified	X

There is no legislation allowing anonymous whistleblower reports to be examined.

In addition, Article 204.6. of the CPC provides that statements that are unsigned or signed with a false signature or recorded on behalf of a fictitious person, or any other anonymous information about an offence committed or planned may not constitute grounds for instituting criminal proceedings.

According to the authorities, in 2022, the Directorate received 5 anonymous applications by employees of various organisations on corruption and other violations at their workplace.

There is no legislation that would ensure the protection of anonymous whistleblowers once they are identified.

Indicator 3.3. The dedicated agency for whistleblower protection has clear powers defined in law and is operational in practice

Background

A “dedicated agency, unit or staff” means “an agency, a unit within the agency, or specialized staff that deals exclusively with certain function(s) and do not perform other duties.”

Assessment of compliance

Benchmark 3.3.1.

	Compliance
There is a dedicated agency, unit, or staff responsible for the whistleblower protection framework	X

There is no dedicated agency, unit, or staff exclusively responsible for whistleblower protection, the implementation of protection measures is carried out by several authorities, which also perform other duties. According to authorities, the Directorate is a dedicated authority in the area of anti-corruption that performs some whistleblower-related functions, but there is no unit or staff within the Directorate that would be responsible for the whistleblower protection framework and would not perform other functions.

Benchmark 3.3.2.

A dedicated agency, unit or staff has the following key powers clearly stipulated in the legislation:

Element	Compliance
A. Receive and investigate complaints about retaliation against whistleblowers	X
B. Receive and act on complaints about inadequate follow up to reports received through internal or external channels or violations of other requirements of whistleblower protection legislation	X
C. Monitor and evaluate the effectiveness of national whistleblower protection mechanisms through the collection of statistics on the use of reporting channels and the form of protection provided	X

Azerbaijan is not compliant with this benchmark's elements as it does not have a dedicated agency, unit or staff responsible for whistleblower protection.

In Azerbaijan, complaints about retaliation against whistleblowers are within the jurisdiction of general courts and the Prosecutor's Office (Article 11-2.5. of the LCC). According to the authorities, there are no statistics on complaints and investigations of retaliation against whistleblowers across the country.

There is no dedicated agency, unit, or staff in Azerbaijan that has the power to receive and act on complaints about inadequate follow up on reports. Complaints about violations of the requirements of whistleblower protection are within the jurisdiction of the courts and the Prosecutor's Office.

There is no dedicated agency, unit, or staff in Azerbaijan that monitors and evaluates the effectiveness of national whistleblower protection mechanisms through the collection of statistics on the use of reporting channels and the form of protection provided. Such statistics are not collected.

Benchmark 3.3.3.

The dedicated agency, unit or staff has the following powers clearly stipulated in the legislation:

Element	Compliance
A. Order or initiate protective or remedial measures	X
B. Impose or initiate imposition of sanctions or application of other legal remedies against retaliation	X

There is no dedicated agency, unit or staff in Azerbaijan that has the powers to order or initiate protective or remedial measures, and to impose or initiate the imposition of sanctions or the application of other legal remedies against retaliation, which is sufficient by itself to find the country not compliant under both elements. The law doesn't provide for the powers of any agency, unit, or staff to impose sanctions, and other legal remedies against retaliation ex officio, i.e., that could be initiated by the abovementioned authorities. A whistleblower may apply to the Prosecutor's Office or plead to court with a petition to apply legal remedies under general legal regulation.

Benchmark 3.3.4.

	Compliance
The dedicated agency, unit, or staff responsible for the whistleblower protection framework functions in practice	X

There is no dedicated agency, unit, or staff responsible for the whistleblower protection framework.

Indicator 3.4. The whistleblower protection system is operational, and protection is routinely provided

Assessment of compliance

Benchmark 3.4.1.

	Compliance
Complaints of retaliation against whistleblowers are routinely investigated	X

There is no information that any retaliation complaints were received and investigated in 2022.

Benchmark 3.4.2.

	Compliance
Administrative or judicial complaints are routinely filed on behalf of whistleblowers	X

There is no information that any such complaints were filed in 2022. No public body has the power to file administrative or judicial complaints on behalf of whistleblowers. Only whistleblowers themselves are entitled to file administrative or judicial complaints.

Benchmark 3.4.3.

The following protections are routinely provided to whistleblowers:

Element	Compliance
A. State legal aid	X
B. Protection of personal safety	X
C. Consultations	✓
D. Reinstatement	X
E. Compensation	X

According to information provided to the monitoring team, protections specified under elements A, B, D and E were not provided to whistleblowers in 2022.

According to the statistics provided, 30 individual consultations were provided to whistleblowers in 2022. The provided case law refers to employees of the education sector, the electricity sector, and the national emergency sector.

Benchmark 3.4.4.

	Compliance
There are no cases where breaches of confidentiality of a whistleblower's identity were not investigated and sanctioned	✓

The monitoring team is not aware of any case of breach of confidentiality of whistle-blower's identity. Consequently, no breach of confidentiality remained uninvestigated and unsanctioned.

Box 3.1. Good practice – Whistleblowers` Protection Law being drafted

On 29 April 2022, the Prosecutor General of the Republic of Azerbaijan approved the Action Plan of the Prosecutor's Office with respect to the implementation of the National Action Plan for 2022-2026 on strengthening the fight against corruption, which specified the Directorate as an executive body responsible for collecting proposals and drafting a single legislative act aimed at improving the laws concerning the encouragement and protection of whistleblowers who are involved in corruption-related investigations. The Directorate has already developed the draft Law and submitted it to the relevant competent authority for consideration.

Assessment of non-governmental stakeholders

In the assessment of non-governmental stakeholders, there is no comprehensive whistleblowers` protection framework in Azerbaijan. In addition, the society lacks awareness of even available whistleblower protection measures.

4 Business integrity

In Azerbaijan, the Corporate Governance Standards, which establish the responsibility of supervisory boards to ensure risk management, are voluntary and lack a monitoring mechanism on their implementation by private sector companies. Financial institutions, designated non-financial businesses and professions, and other obligated entities under the anti-money laundering legislation have an obligation to identify and verify the beneficial ownership and report discrepancies. Azerbaijan lacks a public disclosure mechanism and a centralized beneficial ownership register.

In the absence of a Business Ombudsman institution that aligns with the recommended benchmark standards, the Ministry of Economy is a primary institution responsible for addressing businesses' rights violations by public authorities. However, the effectiveness of the mechanisms, established by the Ministry to this end, is under scrutiny from civil society. Overall, these steps signify the government's commitment to a pro-business environment.

Azerbaijan has set the foundation for future corporate governance developments, aiming for international standards` adherence. However, an evaluation of selected State-Owned Enterprises ("SOEs") in Azerbaijan shows varied compliance regarding disclosure and anti-corruption practices. Common areas of improvement involve better corporate governance, transparency in supervisory board appointments, and material information disclosure. Though board members of these enterprises are acknowledged for their expertise, there is a pressing need for a more transparent, meritocratic appointment process to instil public trust.

Figure 4.1. Performance level for Business Integrity is low

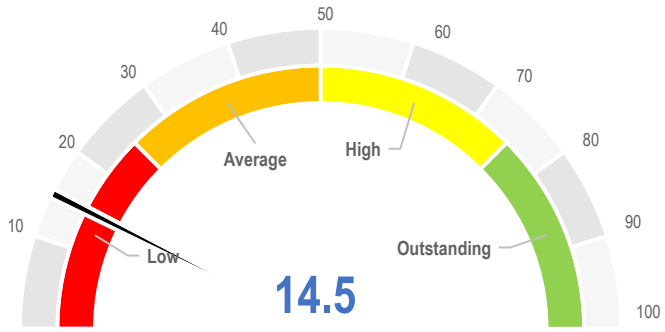
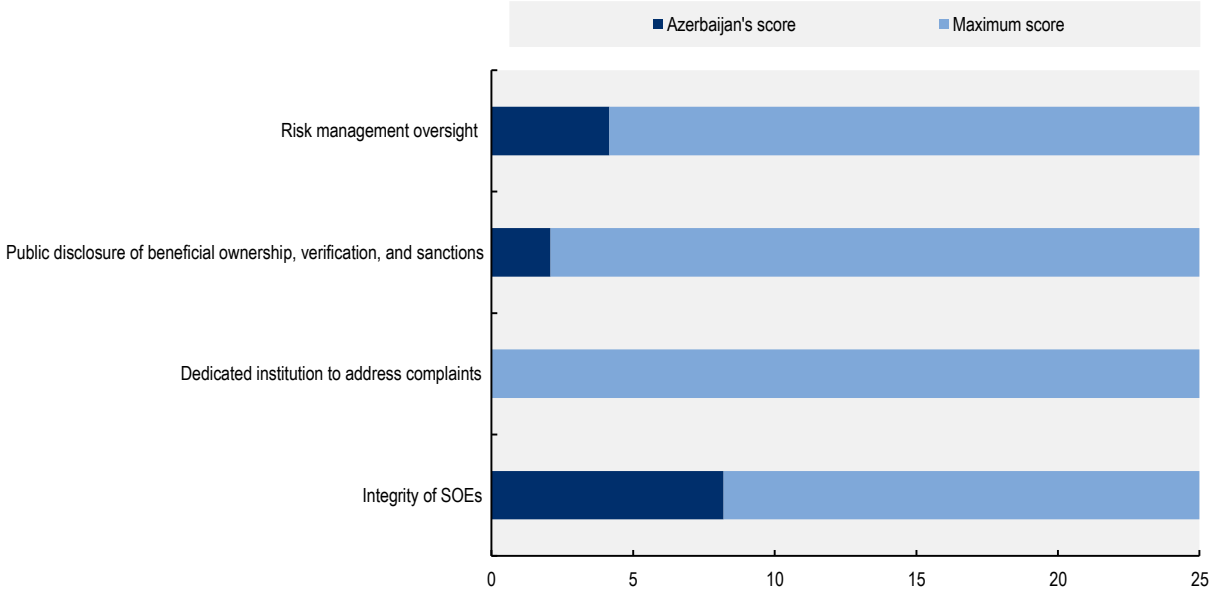


Figure 4.2. Performance level for Business Integrity by indicators



Indicator 4.1. Boards of listed/publicly traded companies are responsible for oversight of risk management, including corruption risks

Background

The Corporate Governance Standards of Azerbaijan (CGS) were adopted in 2011 and are based on the OECD Corporate Governance Principles and international standards in this field. CGS serves as a set of voluntary recommendations aimed at promoting effective corporate governance practices in joint stock

companies and limited liability companies in Azerbaijan. While the private companies, i.e. joint stock companies and limited liability companies, are not obliged to adhere to CGS, its application became mandatory for companies with the Azerbaijan Investment Company as a shareholder through Order No. F-23 of the Azerbaijan Investment Company of 2014.[7]

Assessment of compliance

Benchmark 4.1.1.

Corporate Governance Code (CGC) establishes the responsibility of boards of the companies listed in stock exchanges to oversee risk management:

Element	Compliance
A. CGC or other related documents establish the responsibility of boards to oversee risk management	✓
B. CGC or other related documents establish the responsibility of boards to oversee corruption risk management	x
C. CGC or other related documents which establish responsibility to oversee risk management are mandatory for listed companies	x

Chapter 6, Section 2.1 of CGS provides that supervisory board is responsible for the total process of risk management ensuring that all risks of essential internal and external operations, financial and legal compliance and other risks are evaluated and managed adequately by a stable internal mechanism. Supervisory board shall decide what risks the company should or should not take in pursuit of its goals and objectives. Supervisory board should ensure that the company should have processes in place by which they can identify and assess potential risks, measure their impact potential, and adopt responsive measures to mitigate those risks. Chapter 3, Section 1.1 of CGS addresses the responsibility of supervisory board to oversee, provide strategic guidance and direction to management bodies in the areas of internal control and risk management.

Furthermore, Rules and Standards of corporate governance in joint-stock companies with controlling block of shares under state ownership endorsed in 2019 stipulate the responsibility of supervisory board to ensure that measures are undertaken for effective performance of the risk management system. In banks, corporate management standards are defined by Corporate Governance Standards in Banks that were approved by the Resolution of the Chamber of Control over Financial Markets of the Republic of Azerbaijan No. 1951100027 of 2019 and established a regulatory framework on risk management in financial institutions.

The Government notes that since corruption risks are part of general risks, the responsibility of boards to oversee corruption risk management is established by CGS. Specifically, the Rules and Standards for Corporate Governance in SOEs by the Cabinet of Ministers of the Republic of Azerbaijan dated 4 June 2019 mandates the supervisory boards to ensure the effective functioning of the risk management systems. Key responsibilities include among others adopting and monitoring an internal control and risk management policy, assessing the effectiveness of the risks management system, setting performance

[7] OECD (2022), Anti-Corruption Reforms in Azerbaijan: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://doi.org/10.1787/3ae2406b-en

standards, and endorsing a Corporate Code of Ethics. Though, neither CGC nor other related documents explicitly establish the responsibility of boards to oversee corruption risk management.

The implementation of CGS is voluntary hence it does not satisfy the requirements of the element C. The Law on Securities Market which prescribes the principles and rules for issuing securities and its derivatives outline the requirements for listed companies. The Law requires transparency and aims to prevent circumstances of abuse in securities market. Although the Law is binding for listed companies, the requirement for boards to oversee risk management is not explicitly included. Requirements for the listing of shares are settled by the Rules of listing, delisting, and organizing trading of securities on Baku Stock Exchange that were endorsed in 2020. However, these regulations do not require boards of listed companies to ensure implementation and supervision of risk management system.

Benchmark 4.1.2.

Securities regulator or other relevant authorities monitor how listed companies comply with the CGC:

Element	Compliance
A. The legislation identifies an authority responsible for monitoring the compliance of listed companies with the CGC	X
B. The monitoring is conducted in practice	X

Since CGS are voluntary for implementation for private companies including the listed ones, no authority is explicitly responsible for monitoring compliance of listed companies with CGS. The Central Bank of Azerbaijan is the regulator of the securities market. In this capacity, it ensures monitoring of requirements established by the Law on Securities Market by the companies issuing in the Baku Stock Exchange related to transparency and prevention of market abuse. Although, the authorities referred to Article 83 of the Law on Securities Market stating that Central Bank of Azerbaijan (CBA) is required to take measures related to ensuring the transparency in the securities market, monitor compliance with the Law and the Civil Code of the Republic of Azerbaijan, and in the event of discovering their violations, issue binding orders to eliminate violations. The reference was made also to Article 75 of the Law on the Securities Market, stipulating that all issuers of securities should make public their annual reports (audited financial reports and management report) by submitting them to the Central Bank. Nevertheless, neither Law on Securities Market, nor the Law on the Central Bank of the Republic of Azerbaijan explicitly puts on the CBA the responsibility for monitoring the compliance of listed companies with CGS.

The Government also referred to Chapter 5 (Articles 44-49) of the Law on Securities Market which regulates the activities of Baku Stock Exchange (BSE). In particular, according to Article 45, one of the duties and responsibilities of stock exchange is to ensure fairness and transparency of the organized trading as prescribed by the Listing Rules of BSE. Furthermore, the authorities stated that companies seeking to be listed on BSE must demonstrate compliance with the corporate governance requirements (including financial reporting based on IFRS, requirements for Supervisory Board and Management Board) as part of the listing process according to the Listing Rules (Chapter III and IV). The monitoring team does not share the same view given that the Listing Rules refer to a very limited range of standards provided for by CGS and are also not subject to regular monitoring under the law. Thus, element A is not compliant.

CBA operates the Electronic System for Information Disclosure (ESID), the centralized information system for collection, storage, and dissemination of information to be disclosed under the legislation by issuers (listed companies), i.e., annual and semi-annual financial reports, annual and semi-annual management reports, notification about general meetings of shareholders etc. In 2022, 192 pieces of information and reports were disclosed by 38 listed companies to the public through ESID. According to Article 421 of the

Code of Administrative Offenses of the Republic of Azerbaijan, issuers are fined if they refuse to submit the reports provided by the legislation. BSE also can take enforcement actions against companies that fail to comply with the Listing Rules. These actions may include imposing penalties, delisting, or suspension of trading on the exchange. While the Government did not provide sufficient supporting information to show that BSE or CBA do monitor compliance of listed companies with CGS, it is understood that there is a limited obligation under the legislation for these companies (submission of financial and management reports). Thus, element B is not compliant.

Indicator 4.2. Disclosure and publication of beneficial ownership information of all companies registered in the country, as well as verification of this information and sanctioning of violations of the relevant rules, is ensured

Assessment of compliance

Benchmark 4.2.1.

There is the mandatory disclosure of information about beneficial owners of registered companies:

Element	Compliance
A. The country's legislation must include the definition of beneficial owner (ownership) of a legal entity which complies with the relevant international standard	✓
B. The law requires companies to provide a state authority with up-to-date information about their beneficial owners, including at least the name of the beneficial owner, the month and year of birth of the beneficial owner, the country of residence and the nationality of the beneficial owner, the nature and extent of the beneficial interest held	X
C. Beneficial ownership information is collected in practice	X

The Law on Prevention of Legalization of Criminally Obtained Property and Financing of Terrorism sets forth the definition of the beneficial owner of a legal entity as follows: natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted and/or a contract is being issued. It also includes those natural person(s) who exercise ultimate effective control over a legal person or a foreign legal arrangement (Article 1.1.19.). Such definition is in line with the FATF definition of beneficial owner, and satisfies requirements under element A.

Element B is not compliant. The Government acknowledged that currently no law requires companies to share up-to-date information about their beneficial owners with a state authority. There is no comprehensive legal requirement for companies to keep a state authority informed about changes of their beneficial owners. However, according to Article 17.4 of AML Law, supervision authorities are required to identify beneficial owners during licensing or registration process. Information on beneficial ownership must be submitted to designated state authority by following types of obliged entities - financial institutions, real estate agents, persons providing legal, accounting and tax services, non-governmental bodies, as well as the branches and representatives of non-governmental organizations of foreign states in the Republic of Azerbaijan, and religious organizations (Article 16). Despite these provisions, still a gap remains with respect to legal entities that are not considered obliged persons under AML Law.

Authorities stated that efforts are underway to amend existing legislation that would require legal entities to disclose beneficial ownership information either upon registration or market entry. After verification the information would be included into a registry. The draft law with suggested amendments has already been submitted to the Government for consideration.

Element C is not compliant. While there is no comprehensive requirement for legal entities to provide state authority with up-to-date information about their beneficial owners, such information is not collected in practice in respect of all private companies. The benchmark mandates that the Government ensure in the law and in practice that legal entities register their beneficial owners with the state information. However, the Government observed that State Tax Service (the "STS") through its activities (including but not limited during audits / criminal investigations in order to determine the interrelations between the parties, for transfer pricing purposes, to determine the real owner of the company) does hold information on both actual beneficial and nominal owners of legal entities. The STS maintains the E-portal system which is accessible to a select group of users.

Despite the lack of evidence pertaining to the practice of collecting beneficial ownership information under AML Law, such as statistics concerning the number of companies which have provided this information, it should be noted that this would not influence the scoring under element C.

Benchmark 4.2.2.

Public disclosure of beneficial ownership information is ensured in machine-readable (open data), searchable format and free of charge:

Element	Compliance
A. Beneficial ownership information is made available to the general public through a centralized online register	X
B. Beneficial ownership information is published in a machine-readable (open data) and searchable format	X
C. Beneficial ownership information is available to the general public free of charge	X

There is no centralized online register of beneficial ownership information in Azerbaijan. In the absence of centralized registry, beneficial ownership information cannot be published and made available to the general public free of charge.

Benchmark 4.2.3.

	Compliance
Beneficial ownership information is verified routinely by public authorities.	X

In the absence of comprehensive collection of beneficial ownership information, public authorities do not carry out its routine verification. The laws and ordinances provide that monitoring entities are required to provide certain information to the Financial Monitoring Service under certain circumstances. However, they do not establish routine inspections of beneficial ownership information by government authorities.

Benchmark 4.2.4.

Sanctions are applied routinely, at least for the following violations of regulations on registration and disclosure of beneficial ownership:

Element	Compliance
A. Failure to submit for registration or update information on beneficial owners	X
B. Submission of false information about beneficial owners	X

The Government stated that, in 2022, no sanctions were applied for the failure to submit for registration or update information on beneficial ownership, as well as for submission of false information about beneficial ownership.

Indicator 4.3. There is a mechanism to address concerns of companies related to violation of their rights

Background

This benchmark employs the specific term "dedicated institution". While there is broad consensus on the interpretation of "institution"[8], it was observed that the definition of "dedicated" may vary among different stakeholders. To provide more clarity on the term "dedicated" specifically and in context of this benchmark, the following is provided: "Dedicated agency[, unit, or staff]": An agency [, a unit within the agency, or specialized staff] that deals exclusively with certain function(s) and do not perform other duties".[9] It is crucial to note that seeking clarity on the term "dedicated" does not in any way expand, modify or replace the established meaning of "institution" within this benchmark. The emphasis on "dedicated" is solely for clarity and does not alter the core definition of "institution".

Azerbaijan currently does not have a Business Ombudsman institution that aligns with the recommended benchmark standards. At the same time, according to authorities, the Ministry of Economy in Azerbaijan (the "Ministry") is a primary authority responsible for addressing out-of-court complaints from businesses concerning violation of their rights by other public authorities. To perform this mandate, the Ministry provides different avenues, as explained below, for addressing issues businesses encounter in different areas on ad-hoc and systemic basis. However, this role does not match the benchmark definition of "dedicated institution" as specifically requested by the benchmark.

[8] Black's Law Dictionary defines "institution" as "an organization or foundation, for the exercise of some public purpose or function". Available at https://thelawdictionary.org/institution /

[9] OECD (2023), Istanbul Anti-Corruption Action Plan, 5th Round of Monitoring: Guide, p. 4 available at https://www.oecd.org/corruption/Istanbul-Anti-Corruption-Action-Plan-5th-Round-Monitoring-Guide-ENG.pdf

Assessment of compliance

Benchmark 4.3.1.

There is a dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities, which:

Element	Compliance
A. Has the legal mandate to receive complaints from companies about violation of their rights by public authorities and to provide protection or help businesses to resolve their legitimate concerns	X
B. Has sufficient resources and powers to fulfil this mandate in practice	X
C. Analyses systemic problems and prepares policy recommendations to the government on improving the business climate and preventing corruption	X

According to the Government, the Ministry is the primary authority responsible for addressing complaints from businesses. As outlined in the Ministry's Charter approved by the Decree of the President of the Republic of Azerbaijan dated 30 December 2019, the Ministry has the power among others to review and take measures in the manner established by the legislation on appeals received regarding the activities of the Ministry (this also includes: problems and complaints of business entities related to tax, property, export, import, license, permits and etc.) and demand from state entities and organizations, local self-government entities, other persons the suspension of actions that infringe upon the rights and legitimate interests of entrepreneurs.

To perform the mandate, the Ministry has established various mechanisms to address issues businesses face. Companies can submit their complaints through multiple channels, such as directly to the Ministry in written or verbal form, at meetings with the Ministry's management (including regular high-level meetings in different regions), the Ministry's Appeal Council, call centres and the Ministry's Business Discussion Platform. Furthermore, the complaints could be considered by specialized structures within the Ministry, responsible for preventing and investigating corruption or other legal violations set up under the State Program on Combating Corruption.

As previously detailed, the Ministry itself does not directly qualify as "dedicated institution" for addressing complaints of companies related to violation of their rights by public authorities.

Specifically, the Ministry indicated that the Small and Medium Business Development Agency (SMBDA) is authorised to consider complaints. Under its Charter, SMBDA has the authority to address entrepreneurs' issues, accept and investigate complaints, and liaise with state bodies and organizations regarding decisions that violate entrepreneurs' legal rights. These actions also include providing recommendations to applicants, forwarding appeals to relevant institutions for substantive consideration. In addition, Section 3.130 states that the SMBDA shall "take measures on the flexible solution of the problems of entrepreneurs, receive and investigate their complaints, raise questions before state bodies and organizations in relation to decisions of state bodies and organizations violating the legal rights of entrepreneurs (act or omission)." Perhaps most relevant is the SMBDA's ability under Section 3.1.32 to "carry out investigations, analyse and monitoring in the field of entrepreneurship development in the country, prepare reports and make suggestions related to the elimination of deficiencies".4 At the same time, the civil society observed that the SMBDA has a wide scope of activities mainly focusing on provisions of various services and improvement of business climate in the field of micro, small and medium entrepreneurship rather than addressing company's complaints regarding violation of their rights by public authorities.

The STS under the Ministry's umbrella addresses appeals related to legal violations through its Internal Security and Administrative Complaints Departments, as well as the Tax Ombudsman. The Tax Ombudsman's responsibilities include monitoring the quality of consideration of taxpayers' appeals, supervising the consideration of appeals involving violations of taxpayers' rights, and analysing the activities of state tax authorities to protect taxpayers' rights. The Tax Ombudsman also prepares proposals for more efficient organization of activities.

Although these efforts showcase the Azerbaijani government's commitment to fostering a favourable business environment, and safeguarding the rights of businesses, civil society representatives observed that the presence of these various mechanisms does not necessarily translate to enhanced opportunities for business to protect their rights. They expressed concerns about need to increase level of public trust to agencies addressing complaints of companies related to violation of their rights by public authorities and raise awareness about efforts taken by such agencies to protect business rights. Thus, element A is not compliant.

Element B is not compliant. The information provided by the Ministry only partially aligns with the benchmark definition. Not all departments or agencies listed here fall within the benchmark parameters rendering some of unrelated data to the analysis. For instance, as of the reporting year, the Government informed about the following staff numbers:

- Department for Entrepreneurship Development Policy and Regulation: 30.
- Internal Control Department of the Ministry: 15.
- Internal Security Department of the STS: 20.
- Administrative Complaints Department of the STS: 38.
- Internal control structural units of the State Service for Antimonopoly and Consumer Market Control and State Service on Property Issues: 18 and 26.
- Call Center: 55.
- SMBDA: 240; these roles are addressing complaints of companies related to violation of their rights by public authorities and also provide other services within SMBDA mandate.

In 2022, the Tax Ombudsman did not provide information regarding available resources. It was later clarified that the Tax Ombudsman Office was established in May 2019 as a unit within the State Tax Service under the Ministry of Economy of the Republic of Azerbaijan. Mr. Elchin Mammadov was appointed as the Tax Ombudsman. By 2023, the Tax Ombudsman Office transitioned and expanded, becoming the Tax Ombudsman Service with a team of 12 staff members. However, this development occurred outside the timeframe of the monitored period.

During the monitoring process, no challenges related to workload or resources were reported by the involved agencies. The agencies are financed annually from the state budget with financing information made public. Although the requests from such agencies require mandatory response under the applicable legal framework the involved agencies proactively monitor consideration of their requests. They can also refer complex complaints to the Ministry for systemic resolution. At the same time, civil society observed that while the resources and power could be sufficient, the state agencies considering complaints from the business may lack independence or have affiliation with the Government and therefore not be perceived as an out-of-court mechanism protecting business rights in practice.

Element C is not compliant. The work does not centralise within a single dedicated authority. Instead, responsibilities are dispersed among the Ministry and different institutions operating under its umbrella. The approach does not meet the standards set by the benchmark.

However, it should be noted that the Ministry conducts systematic analyses through the Department for Entrepreneurship Development Policy to eliminate gaps and minimize corruption risks. The Coordination Group coordinates diagnostic analyses and submits draft legislation proposals to the government. During

the 2022 year, the working group, comprising 15 dedicated personnel, has handled 170 cases and made 588 recommendations. These recommendations involve drafting laws and monitoring their review with the legal department supervising these activities. During the monitoring, the Ministry shared an example of systemic work they performed with respect to the open data search system providing information on land plots. The working group aims to reduce cooperation by streamlining 30 procedures into 3 services, introducing electronic leasing processes, and identifying and eliminating corruption risks. The result of the working group work is submitted to the Ministry for further action and policy implementation. The Ministry also provided examples of policy recommendations adopted in 2022. For instance, the Azerbaijani government has implemented various legislative acts to regulate and improve the business environment. For instance, adoption of Law of the Republic of Azerbaijan of 9 December 2022 No. 691-VIQ "On Public-Private Partnership" was mentioned. As a result of Ministry's efforts, changes to the Tax Code promoting the investment environment, including local production, reduction of fixed tax expenses of credit institutions in the process of liquidation, improvement of various administrative measures were implemented.

SMBDA also analyses systemic problems and regularly prepares policy recommendations to the Government and the Ministry of Economy on improving the business climate through surveys, development of recommendations based on the complaints they considered and improving the country's position in international rankings. The recommendations are presented to the Ministry and the working groups.

Systemic work with respect to corruption-related risks is performed by Anti-Corruption Commission of the Republic of Azerbaijan. According to National Action Plans for the Promotion of Open Government, each agency is obliged to analyse specific corruption-related risks to be summarised in the report. The Ministry stated that it complies with this requirement among others by setting up in 2022 the Risk Management Division in the structure of the Internal Control Department.

Benchmark 4.3.2.

The institution mentioned in Benchmark 3.1 publishes online at least annually reports on its activities, which include the following information:

	Element	Compliance
A.	Number of complaints received, and the number of cases resolved in favour of the complainant	X
B.	Number of policy recommendations issued, and the results of their consideration by the relevant authorities	X

During the monitoring period, the Azerbaijani government has disclosed that only SMBDA published online reports while there are no public reports issued by other agencies involved into this work. This lack of comprehensive transparency hinders both civil society and the business sector from making independent assessment of impact of these institutions' activity in particular the successful resolution of complaints.

Element A is not compliant. The Ministry and agencies under its umbrella have been actively addressing complaints. In the first nine months, they received 16,466 complaints that spanned issues related to tax (13,605), antimonopoly and consumer rights (876), property (843), SMEs (952). Overall, the Ministry of Economy received a total of 21,030 complaints from entrepreneurs.5 Upon reviewing the complaints, the Ministry and other agencies took several actions such as providing relevant recommendations/clarification of legislation (4,013); restoring the rights of entrepreneurs (5,803). In some cases, complaints were forwarded to appropriate institutions. These efforts demonstrate the Ministry's commitment to addressing

the concerns of business and promoting an economic environment however there is no public information about this activity.

During the monitoring period, the Azerbaijani government revealed that in 2022, 17 complaints were filed with the Tax Ombudsman, of which 6 were resolved in favor of the complainant.6 The STS publishes information about taxpayers appeals on their website.7

SMBDA also published online reports on its activities to protect the interest of SMEs and improve business environment through policy recommendations. Between January and November 2022, 1,113 complaints were received with 22% of cases resolved in favour of the complainant, and 64.7% receiving recommendation on legislation requirements.8 Complaints covered various topics such as illegal actions by officials, disputes between business and issues related to infrastructure, banking, taxes, customs and property.

Despite the efforts of the SMBDA to address complaints and protect businesses' rights, civil society perceived the agency as more focused on business promotion rather than business protection. This perception highlights the need for SMBDA and the Azerbaijani government to continue strengthening their focus on protecting business's rights.

Element B is not compliant. According to provided information only SMBDA consistently published online reports on its activities including with respect to policy recommendations. In particular, in 2022 the surveys on 10 subjects were held by SMBDA among the SMEs and the results were submitted to the Cabinet of Ministers by the Ministry of Economy. Although during the monitoring mission, the Ministry explained that they are actively involved into policy dialogue through different working groups, review of complaints reports to analyse areas which require improvement and to ensure continuous progress and improvements in the legal framework, the lack of comprehensive online reporting on activities by most agencies under the Ministry's umbrella with the exception of SMBDA remains a concern.

Indicator 4.4. State ensures the integrity of the governance structure and operations of state-owned enterprises (SOEs)

Background

The reform of the SOEs in Azerbaijan commenced in 2021 with their transfer to the Azerbaijan Investment Holding (AIH).[10] As per the Decree of the President of Azerbaijan dated 7 August 2020 "On the Establishment of the Azerbaijan Investment Holding", AIH was established to intensify structural reforms aimed at enhancing the management system of SOEs, increasing their efficiency and transparency, optimizing costs and risks, and fully revitalize their operations. This initiative aligns with international best practices and demonstrates the Azerbaijani government's commitment to adopting modern corporate governance standards for a more effective and depoliticised management of SOEs and their assets. To fully realise AIH's potential, it is crucial for AIH to develop effective communication channels for maintaining robust relationship with all involved stakeholders.

Available evidence does not sufficiently indicate that the appointment process for SOEs boards in Azerbaijan is competitive, merit-based and aligns with international benchmarks. While the expertise of selected supervisory board members is not disputed, it is essential to highlight the need for a more transparent appointment process to ensure credibility and garner public trust.

The monitoring team assessed recent developments concerning five SOEs chosen by AIH: State Oil Company of Azerbaijan Republic (SOCAR); Azerbaijan Railways (ADY); Azerbaijan Shipping Company

[10] OECD (2022), Anti-Corruption Reforms in Azerbaijan: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://doi.org/10.1787/3ae2406b-en.

(ASCO); Azerbaijan Airlines (AZAL) and AzerGold (all together, the "Selected SOEs"). Although these SOEs have individual strengths, common areas for improvement span across all five companies. These include enhancing corporate governance practices, implementing transparent supervisory board appointment procedures and disclosing material information. By addressing these areas, the Selected SOEs will be better positioned for sustainable growth and increased competitiveness. Moreover, stakeholders' perspectives underscore the importance of these improvements with clear expectations for increased transparency and accountability. SOEs must ensure transparency by regularly communicating with stakeholders about anti-corruption measures, providing clear channels for reporting corruption, and actively soliciting stakeholder input on anti-corruption policies.

While the pursuit of best-practice corporate governance is ongoing process, Azerbaijan's efforts in 2022 have laid the groundwork for future development. Looking ahead, AIH informed that its strategy involves continuous improvement and adherence to international standards.

Assessment of compliance

Benchmark 4.4.1.

Supervisory boards in the five largest SOEs:

Element	Compliance				
	SOCAR	ADY	ASCO	AZAL	AzerGold
A. Are established through a transparent procedure based on merit, which involves online publication of vacancies and is open to all eligible candidates	N/A	N/A	N/A	N/A	N/A
B. Include a minimum of one-third of independent members	X	X	X	X	X

This element is not applicable to the SOEs where no board appointments were made during the reporting year (it is applicable, if at least one board appointment took place during this period).

Element A is not applicable. According to AIH, in all Selected SOEs the supervisory boards were established in 2021. As such, there were no supervisory board appointments during the reported year making this benchmark criteria inapplicable to the Selected SOEs.

At the same time, during the monitoring mission, AIH elaborated on the appointment procedure for the supervisory board members. In particular, they are appointed by the President of the Republic of Azerbaijan who acts as shareholder representative. The appointments are made with consideration of their competencies, duties, skills, achievements, business reputation and professional experience. The active work on the abovementioned procedures is being carried on by AIH.

It is important to highlight on necessity of a more transparent procedure based on merit, which involves the online publication of vacancies and is open to all eligible candidates. A transparent procedure could also prevent potential conflicts of interest and guarantee a diverse and well-balanced boards composition. To conform with the international benchmark, Azerbaijan could consider developing and publishing clear criteria for the selection that outline the required qualifications, expertise and experience. Establishing an independent nomination committee responsible for reviewing and shortlisting potential candidates and promoting open competition by publicly advertising board vacancies is recommended.

Element B is not compliant. None of the Selected SOEs currently have independent board members. Although the corporate governance standards prepared for SOE's reflect the possibility of appointing independent board members this principle was not applied in practice during the reported period.

Benchmark 4.4.2.

CEOs in the five largest SOEs:

Element	Compliance				
	SOCAR	ADY	ASCO	AZAL	AzerGold
A. Are appointed through a transparent procedure which involves online publication of vacancies and is open to all eligible candidates	X	X	N/A	N/A	N/A
B. Are selected based on the assessment of their merits (experience, skills, integrity	X	X	N/A	N/A	N/A

This benchmark is not applicable to SOEs where no CEO appointments were made during the reporting year. According to AIH, overall, the nomination and appointment of board members for each of the five largest SOEs mentioned earlier was made in accordance with the respective decrees issued by the President of the Republic of Azerbaijan which are publicly available. However only SOCAR and ADY had appointments in 2022, so the other SOEs have not been assessed under this benchmark.

Authorities have not provided information demonstrating the application of a merit-based and transparent nomination process in the selection of the CEOs. Consequently, there is insufficient evidence to support that CEOs of at least the two mentioned SOEs were appointed through a merit-based and transparent nomination process. While the monitoring team does not doubt that management body members are competent to perform their duties, the monitoring team was unable to evaluate whether a competitive and merit-based process was used to select them. In light of the government's efforts in capacity building of SOEs the monitoring team recommends enhancing the transparency of procedure as one of key focuses (for example, establishing a pool of experts, implementing an online platform for obligations of vacancies).

Benchmark 4.4.3.

The five largest SOEs have established the following anti-corruption mechanisms:

Element	Compliance				
	SOCAR	ADY	ASCO	AZAL	AzerGold
A. A compliance programme that addresses SOE integrity and prevention of corruption	✓	X	✓	X	✓
B. Risk-assessment covering corruption	✓	✓	✓	X	X

The level of establishment of anti-corruption mechanisms varies among the Selected SOEs with some demonstrating a higher degree of adherence to anti-corruption mechanisms than others. While Socar, ADY

and ASCO have anti-corruption mechanism as disclosed in the table below, AZAL and AzerGold need to revisit their anti-corruption frameworks focusing on establishing more comprehensive compliance programmes. During this monitoring effectiveness of anti-corruption mechanisms was not verified.

The assessment of the compliance by each SOE is the following:

SOE	Explanation
SOCAR	The SOE provided sufficient evidence to suggest that both the compliance programme and risk-assessment covering corruption were established.
ADY	Element A. The SOE provided Rules of "Azerbaijan Railways" Closed Joint Stock Company on regulation about reporting of corruption related offenses and Rules of "Azerbaijan Railways" Closed Joint Stock Company on internal disciplinary which address only certain elements of compliance programme such as reporting mechanism and investigation.
	Element B. The SOE provided sufficient evidence to suggest that risk-assessment covering corruption was established.
ASCO	The SOE provided sufficient evidence to suggest that both the compliance programme and risk-assessment covering corruption were established.
AZAL	The company did not furnish the requested documents. Rather it divulged broad information referencing their charter or the practice of conducting risk assessment based on opinion of legal or other departments.
AzerGold	Element A. The SOE provided sufficient evidence to suggest that the compliance programme was established.
	Element B. The SOE presented anticorruption policy which refers to important elements of risk management, for instance, risk monitoring and review, risk mitigation, however, does not contain information on risks analysis and risks evaluation. At the same time, the SOE clarified that it has initiated the process of identifying and assessing corruption risks however the process has not yet been completed.

Benchmark 4.4.4.

In the five largest SOEs, the anti-corruption compliance programme includes the following:

Element	Compliance				
	SOCAR	ADY	ASCO	AZAL	AzerGold
A. Rules on gifts and hospitality	✓	X	✓	X	✓
B. Rules on prevention and management of conflict of interest	✓	X	✓	X	✓
C. Charity donations, sponsorship, political contributions	✓	X	✓	X	✓
D. Due diligence of business partners	✓	X	✓	X	✓
E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	✓	✓	✓	X	✓

While some SOEs have made progress in establishing comprehensive anti-corruption compliance programmes, others have yet to fully implement or adhere to the necessary standards. The disparity in anti-corruption compliance implementation across these SOEs is noteworthy.

The compliance programmes of SOEs address all necessary elements only in certain instances. For instance, compliance programme of AzerGold, Socar, ASCO include rules on gifts and hospitality, prevention and management of conflicts of interest, charity donations, sponsorship, political contributions, due diligence of business partners and responsibilities for oversight. Conversely, other Selected SOEs have only certain components.

As the anti-corruption compliance culture continues to mature in Azerbaijan, it is essential to recognise that the true effectiveness of these compliance programs can only be verified through continuous monitoring and evaluation in the future to ensure that these and other SOEs remain committed to fostering a strong compliance culture and effectively mitigating corruption risks.

In this regard the monitoring team recommends that SOEs actively benchmark their anti-corruption programmes against industry best practices.

The assessment of the compliance by each SOE is the following:

Elements/SOEs	Explanation
SOCAR	
Elements A-E	The SOE provided sufficient evidence to confirm that the anti-corruption compliance programme includes all elements under the benchmark.
ADY	
Element A-D	The anti-corruption compliance programme lacks explicit rules on gifts and hospitality; rules on charity donations, sponsorship, political contributions in the compliance programme; rules on the due diligence of business partners. On the basis of the information provided and that could be assessed (not all documents could be translated), it does not seem that the company has rules on prevention and management of conflict of interest. The company states that programme incorporates provisions on rules on prevention and management of conflict of interest through Clause 8.15.3 of the Rules of “Azerbaijan Railways” Closed Joint Stock Company on internal disciplinary) however it seems that this clause is primary focus on avoiding conflicts of interest during official investigations rather than managing potential conflicts in the company’s wider activity.
Element E	The company assigns on the prevention of responsibilities within the company.
ASCO	
Elements A-E	The SOE provided sufficient evidence to confirm that the anti-corruption compliance programme includes all elements under the benchmark. However, the monitoring team was unable to thoroughly review and evaluate some documents, because in certain instances there was no translation, or the provided copy was not in a format that could be translated effectively using Google Translate.
AZAL	
Elements A-E	The clarity of anti-corruption compliance programme is somewhat obscured due to the lack of explicit details provided in responses. The SOE referred to Law on Combating Corruption among other rules. For instance, while the company’s approach to managing conflicts of interest is presumably detailed within job descriptions or regulations for structural units, these documents have not been made available for review and there is no unified approach to this. Additionally, the guidelines on charity, sponsorship contributions are reflected in the collective arrangements between the management and the collective body. However, this suggests that such agreements are not the primary regulatory documents that dictate the company’s actions in this area. In relation to accountability, the company outlines general stipulations about the manager’s right to delegate responsibility to a suitable officer or structural unit. Yet, it remains uncertain if such an appointment has indeed been executed.
AzerGold	
Elements A-E	The SOE provided sufficient evidence to confirm that the anti-corruption compliance programme includes all elements under the benchmark.

Benchmark 4.4.5.

The five largest SOEs disclose via their websites:

Element	Compliance				
	SOCAR	ADY	ASCO	AZAL	AzerGold
A. Financial and operating results	✓	✓	✓	X	✓
B. Material transactions with other entities	✓	X	✓	X	X
C. Amount of paid remuneration of individual board members and key executives	X	X	X	N/A	X
D. Information on the implementation of the anti-corruption compliance programme	✓	X	✓	X	X
E. Channels for whistleblowing and reporting anti-corruption violations	✓	X	✓	X	X

The assessment of the Selected SOEs in Azerbaijan reveals varying levels of compliance in terms of disclosure. While some SOEs have made strides in enhancing transparency, there is still considerable room for improvement across all entities. Enhancing disclosure practices and addressing the identified gaps in compliance will contribute to fostering a more transparent and accountable business environment in Azerbaijan. To achieve this, the SOEs should work towards:

- Regularly updating their financial and operating results, ensuring that all relevant information is current and accessible to the public.
- Disclosing material transactions with other entities, providing a clear and comprehensive account of the SOEs' partnerships and engagements.
- Providing detailed information on the remuneration of individual board members and key executives to promote transparency and accountability.
- Sharing up-to-date information on the implementation of their anti-corruption compliance programs, demonstrating their commitment to combating corruption.
- Establishing and promoting designated channels specifically for whistleblowing and reporting anti-corruption violations, encouraging employees and stakeholders to report concerns without fear of retaliation.

The assessment of the compliance by each SOE is the following:

SOE / Elements	Explanation
SOCAR:	
Element A	The results have been published at https://www.socar.az/en/page/financial-reports
Element B	Material transactions are disclosed in consolidated financial statements at https://www.socar.az/en/page/financial-reports.
Element C	According to understanding of the monitoring team, it is an established practice to present a total sum of remuneration as a generalised data. According to the latest report, key management individuals are entitled to salaries and benefits according to the approved payroll matrix and compensation for serving as members of the Boards of directors for certain Group companies. During 2022, compensation of key management personnel totalled to AZN 1.844 mln. The report however lacks clarity on if “key management” encompasses “individual board members and key executives” as required by the benchmark.
Element D	As of June 2023, the said information has not yet been made available. This could be due to approval processes involved. According to understanding of the monitoring team, it is an

	established practice to publish reports at https://www.socar.az/en/page/sustainable-development-reports.
Element E	Although the company maintain a general channel for addressing concerns, it also offers a dedicated dropdown option for reporting instances of corruption.
ADY	
Element A	As of June 2023, the said financial report has not yet been made available. This could be due to approval processes involved. We understand that it is an established practice to publish reports at https://corp.ady.az/haqqimizda/hesabatlar/azerbaycan-demir-yollari-qsc-nin-maliyye-hesabatlari.
Element B	The monitoring team could not assess compliance, because no information was provided.
Element C	The monitoring team could not assess compliance, because no information was provided.
Element D	The monitoring team could not assess compliance, because no information was provided.
Element E	The company has a general channel for communicating concerns as disclosed at https://corp.ady.az/elaqe. The ADY hotline appears to be more focused on customer service rather than whistleblowing and reporting anti-corruption violations.
ASCO	
Element A	The results have been published at https://www.asco.az/en/pages/2/227.
Element B	Material transactions are disclosed in consolidated financial statements at https://www.asco.az/uploads_files/2023/06/19/808001687176791.pdf.
Element C	According to understanding of the monitoring team, it is an established practice to present a total sum of remuneration as a generalized data. According to the latest report, key management individuals are entitled to salaries and benefits according to the approved payroll matrix and compensation for serving as members of the Boards of directors for certain Group companies. During 2022, compensation of key management personnel totalled to AZN 685 mln. The report however lacks clarity on if “key management” encompasses “individual board members and key executives” as required by the benchmark.
Element D	The company disclosed information on implementation of the anti-corruption compliance programme and subsequent certification ISO 37001 - "Anti-corruption management system" in 2022 at https://www.asco.az/uploads_files/2022/11/11/557101668422078.doc.
Element E	
AZAL	
Element A	The most recent report is dated 2020 as disclosed at https://www.azal.az/en/corporate-information/financial-reports. The financial reports for 2021-2022 are not available yet.
Element B	The company provided link to tender.gov.az which does not suggest that the company disclose information on its website as required by the benchmark.
Element C	The company informed that the remuneration is currently not paid.
Element D	
Element E	The company has a general channel for communicating concerns. The company also clarified that reports can be sent by email or postal service. However general channels do not explicitly clarify this reporting process.
AzerGold	
Element A	As of June 2023, the said financial report has not yet been made available. This could be due to approval processes involved. According to understanding of the monitoring team, it is an established practice to publish reports at https://azergold.az/en/haqqimizda/maliyye-ve-audit-hesabatlari.
Element B	The monitoring team could not assess compliance, because no information with respect to the monitoring period was provided. However as per the Government, it is an established practice to disclose material transactions with other entities. https://azergold.az/en/haqqimizda/maliyye-ve-audit-hesabatlari. The historic data was not verified by the monitoring team as it falls outside of the reporting period.
Element C	The monitoring team could not assess compliance, because no information with respect to the monitoring period was provided. However as per the Government, there is an established practice to disclosed amount of paid remuneration of individual board members and key executives as could be demonstrated by historical data available at https://uploads.cbar.az/meas/8364776f319a24d9e63bc70f6.pdf. The historic data was not verified by the monitoring team as it falls outside of the reporting period.

Element D	On the website https://azergold.az/en/haqqimizda/siyaset-ve-qaydalar only Anti-Corruption Policy is publicly available. However, the SOE provided for review other policies implying that the anti-corruption compliance policy may be actively applied. Yet, in spite of benchmark requirements this information is not made public.
Element E	Following a peer review AzerGold's website was updated to provide information on the available channels for reporting corruption. However, this does not change the assessment in relation to the benchmark for the monitoring period.

Box 4.1. Good practice in business integrity field in Azerbaijan

Overall, the SOEs in Azerbaijan did not provide extensive information on the best practices they have applied. However, some positive practices were observed among certain entities. For instance, in 2022, ASCO pursued certification with ISO 37001 – Anti-bribery management systems standard while AzerGold publicly declared their commitment to certification and recommendations provided by organizations such as the OECD. During the monitoring, AzerGold also disclosed that it launched work on implementation of ISO 37001:2016 Anti-bribery management systems standards aiming for certification by 2024. These efforts demonstrate a commitment to aligning with global norms and enhancing transparency.

Another notable practice observed among SOEs was their increasing engagement with the private sector through industry associations to exchange knowledge and insights on compliance practices. This collaborative approach is beneficial for both the public and private sectors, as it encourages mutual learning and the adoption of robust compliance measures across industries.

It is essential for Azerbaijan's SOEs to continue expanding on these best practices and adopting international standards in order to foster a culture of transparency, accountability, and good governance. By doing so, they can further enhance their credibility and reputation, ultimately contributing to the sustainable growth and development of Azerbaijan's economy.

5 Integrity in public procurement

Public procurement legislation in general covers the acquisition by state budget funds of goods, works, and services concerning public interests in Azerbaijan. Procurements funded by the internal funds of utilities, natural monopolies, SOEs and MOEs are not subject to procurement law procedures and are carried out in accordance with internal (corporate) procurement policies of such enterprises. The Law on Public Procurement stipulates open tendering as the default procurement method for the procurement of goods, works, and services above a set threshold. The law provides for only four exceptions from the competitive procurement procedure. However, direct contracting was used too extensively in 2022. It should be ensured that the application of direct contracting should be reduced to the absolute minimum for objectively justified case and that relevant guidance is developed and published, which outlines the application of the four criteria for exceptions. There are some basic COI regulations in public procurement that should be further developed and brought in line with the relevant international standards. Debarment and effective prosecution of corruption related offences in public procurement should be ensured. The e-procurement system is at the initial development stage in Azerbaijan. Public access to information and data on public procurement should be enhanced.

Figure 5.1. Performance level for Integrity in Public Procurement is average

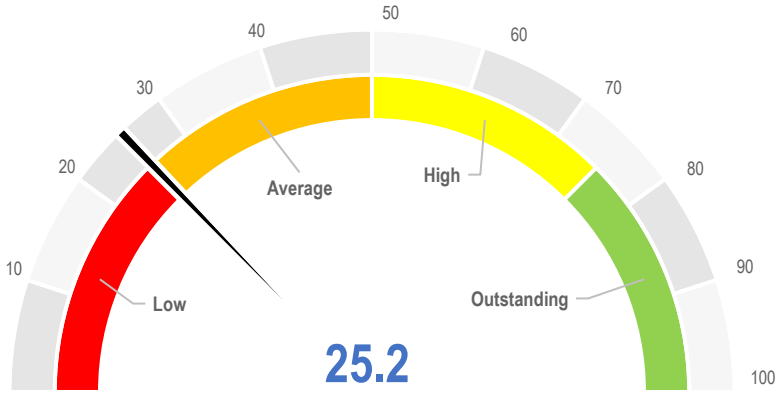
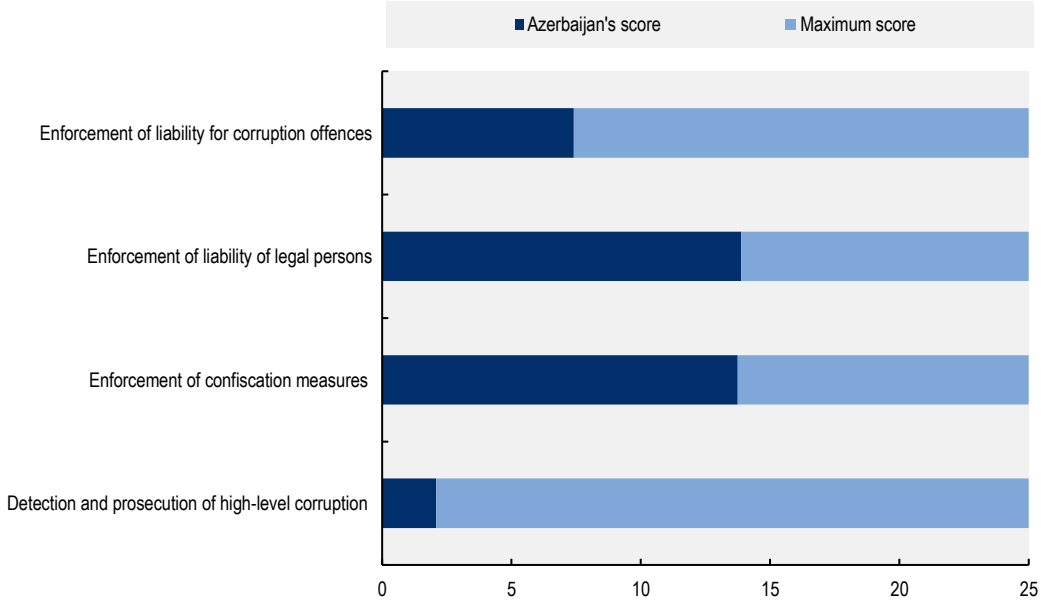


Figure 5.2. Performance level for Integrity in Public Procurement by indicators



Indicator 5.1. The public procurement system is comprehensive

Background

The Law on Public Procurement of Azerbaijan that was enacted in December 2001 with further amendments regulates the procurement of goods, works, and services. The Authorities stated that 12,102 public procurement contracts were placed in 2022 for the total value of AZN 6.78 billion. The GDP of Azerbaijan was AZN 121,446 billion in 2022. The reported volume of public procurement in Azerbaijan represents only approximately 5.6 per cent of GDP when, as indicated in the Global Public Procurement Database of the World Bank, on average worldwide it represents 13-20 per cent of GDP, i. e. at least 2.6 times more. [11]

Assessment of compliance

Benchmark 5.1.1.

Public procurement legislation covers the acquisition of works, goods and services concerning public interests by:

Element	Compliance
A. Publicly owned enterprises, including SOEs and municipality owned enterprises	X
B. Utilities and natural monopolies	X
C. Non-classified area of the national security and defence sector	✓

The Law on Public Procurement "applies to the procurement of goods (works and services) by state enterprises and entities (institutions) in the Republic of Azerbaijan, the enterprises and entities in which state's share is 30 percent or more, by means of funds received from the state and guaranteed state loans and grants". According to the public procurement law, the law is not applicable to procurement of foodstuffs by state enterprises (institutions) in a centralized order at the expense of the state budget. These procurements are regulated by a separate Presidential decree. The information about the volume of the procurement of foodstuffs that are exempt from the Law on Public Procurement in 2022 was not available for the monitoring.

The Authorities of Azerbaijan explained that procurement financed by the internal funds of utilities, natural monopolies, SOEs and MOEs is not subject to procurement law procedures and is carried out in accordance with their internal (corporate) procurement policies. It is planned to include these procurements in the scope of regulation of the new edition of the Public Procurement Law. There is no evidence of any state-wide tool that would ensure incorporation of the essential public procurement requirements in the internal procurement policies of SOEs. The Authorities explained that corporate management standards including the principles of these procurement policies were established by the Presidential decree No 1120 of 07 August 2020. This decree concerns the Azerbaijan Investment Holding (AIH) that manages some but not all SOEs. The internet translation of the text of the decree showed that there was no regulation relevant to procurement besides the duty of AIH "to monitor the efficient use of budget funds, loans, grants and other financial funds /…/ (para 3.1.22.)"and the duty "to carry out the purchase of goods (works and services), as well as meeting the needs in the relevant field in accordance with the Law of the Republic of

[11] https://www.worldbank.org/en/news/feature/2020/03/23/global-public-procurement-database-share-compare-improve

Azerbaijan "On State Procurement" (para 3.1.35.)". All this indicates that procurement financed by the own funds of entities as indicated in the sections above covering the elements A and B do not fully have to follow the principles of transparency and competition inherent to public procurement regulation. Since SOEs, MOEs, utilities and natural monopolies are usually providers of essential services and goods for the population of the country, it is very important to ensure that the main task of procurement regulation, i. e. achieving the best value for money, would be ensured in procurement of these companies both using state budget and their own funds to safeguard a reasonable level of public service prices. Thus, elements A and B are not compliant.

Element C is compliant. The Authorities confirmed that the non-classified area of the security and defence sector is also subject of public procurement law. However, transparency and competition which are the main elements of public procurement in the legal regulation are not ensured in this area in practice in Azerbaijan as the respective procurement plans are not public and non-competitive procurement procedures, in particular single source procurement methods dominate in the area.[12]

Benchmark 5.1.2.

	Compliance
The legislation clearly defines specific, limited exemptions from the competitive procurement procedures	X

The Law on Public Procurement stipulates open tendering as the default procurement method for procurement above the threshold (AZN 50K in 2022) set by the conforming executive authority (para 17.1). The RFQ method is applicable for the procurement between AZN 5K and 50K (Decision No. Q-12 of the Board of the Ministry of Finance of Azerbaijan dated May 20, 2013). At the same time, the law provides for exemptions from the competitive procurement procedures in case of procurement above the threshold subject to approval by the conforming executive authority (para 17.3).

It is commendable that the law (Article 21) provides only four reasons (conditions) for single source procurement, i. e. single provider or exclusive property rights; impossibility of advance planning (unforeseen need); emergency; keeping compliance with the existing goods or technologies. The law does not provide further, more detailed requirements for transparency and justification when applying these conditions as recommended in the UNCITRAL Model Law on Public Procurement. The authority responsible for approving single source procurement above the set threshold, i. e. the State Service for Antimonopoly and Consumer Market Control (SSACMC) under the Ministry of Economy, is the only safeguard against misusing the single source procurement method. A committee consisting of four members established at SSACMC reviews the applications by contracting authorities to use non-open tender procedures. The decisions are made by the members of the committee considering the requirements of the Law on Public Procurement based on the review of the specialists of SSACMC. Any guidance or rules for these committee members to assist them in their decisions have not been made available to the Monitoring Team.

Applications to use other than open tender methods and decisions of SSACMC in 2022 is the following:

[12] Only 29 per cent of procurement of the non-classified area of the national security and defence sector were spent through competitive methods including AZN 17.4 billion via open tenders and AZN 86.2 billion via e-open tenders, in 2022 (whilst 71 per cent of the total procurement volume was spent via single procurement in this area).

	Number of contracts	Value of contracts (AZN billion)
Applied	4,661	3.4
Fully or partially accepted	4,227	2.3

The volume of procurement that was approved to be carried out by non-open tender procedures was high (approximately 34%), considering that the total value of public procurement was AZN 6.78 billion in 2022.

Single source procurement in 2022 based on the criteria as per the Public Procurement Law of Azerbaijan is following:

Category	Number of contracts	Value of contracts (AZN million)
Keeping compliance with the existing goods or technologies	764	610,802.5
Single provider or exclusive property rights	1,310	251,936.5
Emergency	16	18,489.9
Impossibility of advance planning (unforeseen need)	2,188	1,397,208.4
In total	**4,278**	**2,278,437.3**
The main reasons for justification of the conditions for application of the single source method:		
Return of the territories in the Western part of the country to the government's control	*256*	*393,999.2*
COVID-19	*22*	*37,536.9*

Although open tendering is the default procurement method, the statistical data suggests that direct contracting was extensively used in 2022. The total volume of contracts placed through competitive processes amounted to AZN 4.5 billion, or 66 per cent of the total value. AZN 2.3 billion or 34 per cent were contracted directly without competition.

The non-governmental stakeholders informed the monitoring team that in the audit of state budget report submitted to the Parliament by the Chamber of Accounts also noted a domination of non-competitive single source procurement in the volume of procurement during the last few years. There was also a decrease in the number of open tenders whilst the application of the less competitive RQP method increased both in number of application and value of contracts. Based on the statistical data provided by the Authorities, RQP was used for 490 contracts with a total value of AZN 1002.21 million, i. e. 15 per cent of the total value of procurement in 2022.

The provisions of the Law on Public Procurement of Azerbaijan regulating the application of single source procurement are based on the UNICTRAL Model Law (1994). However, the practical application of this normally exceptional procurement method has led to extensive use, consequently limiting access of companies to public procurement contracts. The law does not require enhanced transparency and compulsory justification of the specific (particular) exceptional circumstances in case of application of exemptions from the competitive procurement procedures. There is neither regulation nor criteria set in the law to determine if the absence of alternatives or the impossibility of advance planning were applied reasonably and were justified sufficiently as the reason for single source procurement. The possibility for

public scrutiny is limited as the decision-making process concerning single source procurement is not sufficiently transparent. The particularly high volume of procurement under exemptions from competitive procurement procedures shows that the relevant national legal regulations did not (based on the data of 2022) ensure minimalisation of the exceptional application of procurement procedures with limited or no competition.

Benchmark 5.1.3.

	Compliance
Public procurement procedures are open to foreign legal or natural persons	✓

All foreign legal and natural persons can participate in public procurement based on the Law on Public Procurement (para 8.1.). Representatives of the government of Azerbaijan reassured the monitoring team that the e-procurement system is fully open to foreign participants and does not require legal registration.

Foreign tenderers need to obtain their e-signature to participate in e-tenders. Foreign legal or natural persons can acquire their e-signature at the embassies of Azerbaijan. However, this service was limited and slowed down during the last few years due to the pandemic. The e-signature can also be acquired at the website www.dth.az.

Without e-signature, foreign tenderers can participate in non-electronic tenders where the estimated contract amount is higher than USD 3 million. According to the 2018 amendments to the Law on Public Procurement, procurement with an estimated value in national currency that is equal to USD 3 million or less shall be carried out exclusively through e-procurement. Only micro, small, and medium enterprises are eligible to participate in this relatively low value procurement segment whilst foreign companies need to have a local branch to be eligible to participate. A definition of MSMEs is provided in the following table.

Definition of micro, small, and medium enterprises in the legislation of Azerbaijan and participation of these companies in open tenders in 2022 is following:

	Number of employees	Annual revenue (in thousands of AZN)
Micro	1-10	≤200
Small	11-50	200 < to ≤ 3,000
Medium	51-250	3,000 < to ≤ 30,000

	Number of contracts	Value (in millions of AZN)
Open tender, including:	4,063	3,430.71
- above USD 3 million	180	2,226.45
- below USD 3 million (with exclusive participation of MSMEs)	3,883	1,204.26

The Law on Public Procurement also provides for exceptions “in cases specified in regulatory documents governing the government procurement” (para 8.1.). The regularity of the application of these exemptions and its implications are not clear. The Authorities explained that these provisions allow the implementation of international treaties and decisions based on international sanctions.

The law also foresees two cases when participation of foreign suppliers can be restricted, i. e. so called “domestic preference - a privilege applied by procuring entity /…/”. In accordance with paras 36.9 and 44.2 of the Law on Public Procurement, a procuring entity when evaluating tenders may apply domestic

preference of up to 20 per cent on the proposed tender price under the condition that the thus evaluated tenders meet the minimum requirements of the tender conditions.

In 2022, 316 contracts were awarded to foreign legal or natural persons in the amount of AZN 772 million. That represents 11 per cent of the total value of procurement in 2022 and is approximately 3 per cent lower than in 2020. Despite the restrictions and limits mentioned above, procurement in Azerbaijan is, in principle, open to foreign legal or natural persons.

Indicator 5.2. The public procurement system is competitive

Assessment of compliance

Benchmark 5.2.1.

Direct (single-source) contracting represents:

Element	Compliance
A. Less than 10% of the total procurement value of all public sector contracts (100%)	0%
B. Less than 20% of the total procurement value of all public sector contracts (70%)	
C. Less than 30% of the total procurement value of all public sector contracts (50%)	

Elements A-C – not compliant. In 2022, the total value of public procurement contracts amounted to AZN 6,779.24 million. The total value of direct (single-source) contracting amounted to AZN 2,278.43 million, which represents approximately 34 per cent of the total procurement value. Thus, requirements under any of the elements are not met.

Benchmark 5.2.2.

The average number of proposals per call for tender is:

Element	Compliance
A. More than 3 (100%)	A (100%)
B. More than 2.5 (70%)	
C. More than 2 (50%)	
D. More than 1.5 (30%)	
E. Less than 1.5 (0%)	

Based on the Law on Public Procurement (paras 11.1 and 50-4.2) a minimum of three proposals per tender exercise is mandatory to continue a tender or e-tender process. In those cases, the law permits re-tendering based on re-adjusted tender requirements. Approximately 15 per cent of competitive e-procedures commenced in 2022 were cancelled because of insufficient number of participants or technical issues (1,717 online tender processes were cancelled). The data about cancelled tenders conducted outside e-procurement was not made available. Information about the average number of proposals per tender process in 2022 was not available.

Benchmark 5.2.3.

The threshold value for goods contracts:

Element	Compliance
A. Less than EUR 2,500 equivalent (100%)	B (50%)
B. Less than EUR 5,000 equivalent (50%)	
C. Less than EUR 10,000 (30%)	
D. More than 10,000 (0%)	

The threshold value for goods, works and services was AZN 5,000 for all procurement procedures in 2022 in Azerbaijan, equivalent to approximately EUR 2,687.

Indicator 5.3. Dissuasive and proportionate sanctions are set by legislation and enforced for procurement-related violations

Assessment of compliance

Benchmark 5.3.1.

Conflict of interest in public procurement is covered by legislation and applied in practice:

Element	Compliance
A. There are explicit conflict of interest regulations established by law covering all public employees involved in the procurement cycle (from planning to contract completion stage)	X
B. Sanctions are routinely imposed on public employees for violations of conflict of interest rules in public procurement	X
C. There are explicit conflict of interest regulations established by law covering all private sector actors involved in procurement	X

Element A is not compliant. The Article 13 of the Law on Public Procurement regulates conflict of interest (COI) in public procurement. It prohibits the involvement in public procurement of public sector employees who have any family, relatives or equivalent relationship with a tenderer participating in procurement procedures (para 13.2.1.) and public sector employees who, during the three years preceding a procurement procedure, were employed by a tenderer participating in procurement procedures (but not in the reverse situation where a public sector employee joins a private sector company) (13.2.2.). If the provided English version of the Law on Public Procurement of Azerbaijan is correct, it is positive that these prohibitions apply to a broad circle of employees of a procuring entity and any persons otherwise involved in procurement related duties (e.g., consultants of a procuring entity).

The Law on Public Procurement does not provide a definition of COI or private interests. It does not address cases of potential or apparent COI. The essential elements of control of COI and methods to resolve or prevent COI are not stipulated in the law. The current COI regulations in the Law on Public Procurement do not cover the full range of private interests set by international standards, such as any

pecuniary and non-pecuniary advantage to a public sector employee, friends, other persons, or organisations with whom a public sector employee has personal, political or other affiliations or associations. These issues are not addressed in the general anti-corruption regulations either (see PA 2 “Conflict of interest and asset declarations”, Indicators 1 and 2).

The Law on Public Procurement (Article 13-1.) regulates the Code of Conduct of public officials involved in public procurement. The methods to resolve the COI, declarations of COI and personal interest in specific public procurement, and the responsibility of public officials involved in public procurement for violation of the relevant legal regulations and professional requirements shall be regulated by the code of conduct as stipulated by the Law on Public Procurement (paras 13-1.1.1.–13-1.1.3.).

The website link to the "Code of Conduct of Officials Involved in Public Procurement" (available only in the national language), approved by the Decision No. 118 of the Cabinet of Ministers of the Republic of Azerbaijan at 19.03.20, was provided by the Authorities. The regulation of this legislation could not be evaluated for the monitoring purposes as it was not available in the monitoring language.

The procurement proposal by a supplier who violates the COI regulations shall be rejected if the violation was confirmed by the conforming executive authority (Article 12 of the Law on Public Procurement). 171 procurement procedures (i. e. 12 per cent of the total of 1,449 cancelled procedures) with a value of approximately AZN 162 million were cancelled by the conforming executive authority on the grounds of collusion. However, law is silent about measures applicable to a public procurement procedure in case of violation of COI regulations by public sector employees involved in public procurement.

The Authorities explained that sanctions for violations of COI regulations by public sector employees are set in Article 445-1 of the Code of Administrative Offences of the Republic of Azerbaijan.[13]

The COI provisions of the Law on Public Procurement cover the actual public procurement procedures (including preparatory stage, i. e. consultations, which is commendable) but not the full procurement cycle (from planning to contract completion stage) as required by element A of benchmark 3.1.

Element B is not compliant. The authorities did not provide data showing the routine application of sanctions (examples of at least three cases of sanctions imposed in 2022 were required) on public sector employees for violations of conflict of interest rules in public procurement. The authorities indicated that the required data was not collected.

Element C is not compliant. There is one COI related prohibition covering private sector actors in the Law on Public Procurement. Para 13.3. prohibits employees of the legal entities affiliated to a supplier (contractor) to participate in the preparation of documents for procurement procedures. It is a positive and progressive initiative to regulate COI of private sector actors involved in procurement. It should be further extended to cover any involvement of private sector actors with the procuring entity (audit, consultations, other services, etc) or any ownership, management, or other commercial interest of a private legal person if it can influence or may be considered as influencing procurement related decisions of procuring entity (see the monitoring Guide for more details and examples). The law should also cover both natural and legal persons of the private sector.

[13] https://www.e-qanun.az/framework/46960#_ednref411

Benchmark 5.3.2.

Element	Compliance
Sanctions are routinely imposed for corruption offences in public procurement	X

The Authorities of Azerbaijan provided a description of one criminal case with a conviction of a public sector official for corruption offences in public procurement in 2021. The executive director of one of the state agencies under the President of the Republic of Azerbaijan inter alia caused significant damage by spending public funds based on contracts concluded without conducting the required public procurement procedures, as well as embezzling a large amount of money belonging to the national budget using various schemes during numerous procurement procedures. Together with other persons he also legalised close to AZN 6 billion obtained through crimes. The executive director was sentenced for the misappropriation of property in aggravated circumstances (Article 179.4 of the CC of Azerbaijan), for the money laundering in aggravated circumstances (Article 193-1.3.2. of the CC of Azerbaijan), for the abuse of functions (powers) in public procurement in aggravated circumstances (Article 308-2.4. of the CC of Azerbaijan). He was sentenced on 21.12.2021 to 10 years and 6 months of imprisonment and deprivation of the right to occupy senior and materially responsible positions in state and municipal bodies for 3 years (the decision of the first instance court was appealed; the appellate court upheld the decision of the first instance court on 29.03.2022).

According to the monitoring definitions, “routinely” means “applied or used systematically as a usual practice. The application or use is systematic when it includes at least 3 cases per year”. One example of conviction for corruption offences in public procurement is not sufficient to meet the requirement of the Benchmark 3.2. The case of conviction concerned 2021 and not the assessment period of 2022. The authorities are encouraged to try to find more examples of the relevant convictions by addressing this request to the prosecutors representing the state at the courts or by researching public decisions of the courts.

Benchmark 5.3.3.

The law requires to debar from the award of public sector contracts:

Element	Compliance
A. All natural persons convicted for corruption offences	X
B. All legal persons and affiliates of legal persons sanctioned for corruption offences	X

Element A is not compliant. The Authorities explained that the provisions of the Law on Public Procurement (para 6.2.6.) prohibit the participation in public procurement procedures if a director of a legal person was convicted for an economic offence, including corruption, in the past five years. However, active and passive bribery and other corruption crimes are not economic crimes but crimes against the interests of public service in the CC, where these crimes are included in Chapter XXXIII. “Corruption crimes and other crimes against interests of service”. The above debarment conditions stipulated in the Law on Public Procurement (para 6.2.) make no reference to corruption offences.

The Authorities of Azerbaijan also stated that the new public procurement law will have more specific clauses about COI and that companies involved in corruptive activities will be restricted to participate in tenders for a certain period depending on the situation.

Element B is not compliant. As indicated by the Authorities, the prequalification requirements concerning non prior convictions for crimes related to the professional activities of suppliers (tenderers) also apply to legal persons. The criminal liability of legal entities, including for corruption offences was introduced in Azerbaijan in 2012. However, as described under the analysis of element A of Benchmark 3.3., corruption crimes are not included in the debarment provisions set in the Law on Public Procurement (para 6.2.6.).

Benchmark 5.3.4.

Debarment of all legal and natural persons convicted for corruption offences from the award of public sector contracts is enforced in practice:

Element	Compliance
A. At least one natural person convicted for corruption offences was debarred	X
B. At least one legal person or an affiliate of a legal person sanctioned for corruption offences was debarred	X

Element A is not compliant. The requested data proving that at least one natural person convicted for corruption offences was debarred in 2022 were not provided. The authorities indicated that the requested data was not collected.

Element B is not compliant. The criminal liability of legal entities has been applicable in Azerbaijan since 2012. The requested data proving that at least one legal person or an affiliate of a legal person sanctioned for corruption offences was debarred in 2022 was not provided. The authorities indicated that the requested data was not collected.

Indicator 5.4. Public procurement is transparent

Background

An e-procurement platform was launched in Azerbaijan in 2018 together with the relevant amendments of the Law on Public Procurement. In 2019, the “Regulations on a single Internet portal of public procurement” were approved. Only two of seven applicable procurement methods are to be conducted through e-procurement, which is mandatory for open tenders if the procurement value in national currency equals or is below the equivalent of USD 3 million. The monitoring team is concerned about the fact that the law provides for the use of the less transparent paper-based procurement system for the procurement of contracts with a value of the national currency equivalent above USD 3 million. The share of the e-procurement value is still quite low in Azerbaijan. 15 per cent of the total value of procurement was conducted through the e-procurement system in 2021 and 19 per cent in 2022. 66 per cent in 2021 and 59 per cent in 2022 of the total number of contracts was concluded through the e-procurement system. This shows that the procurement of a smaller value contracts is carried out through e-procurement.

The non-governmental stakeholders noted some recent improvements in the e-procurement area with the expectation that it will help to ensure more transparency in public procurement in Azerbaijan. Recent efforts of the authorities to enhance and develop a suitable e-procurement system are commendable and should be continued and intensified. All necessary resources, including financial, technical, and expert (human), shall be made available for this effort. This is particularly important in the context of the fact that currently

only two specialists are working on e-procurement in the State Service for Antimonopoly and Consumer Market Control which is not sufficient.

Assessment of compliance

Benchmark 5.4.1.

An electronic procurement system, including all procurement methods:

Element	Compliance
A. Is stipulated in public procurement legislation	X
B. Is accessible for all interested parties in practice	X

The Law on Public Procurement stipulates the following procurement methods: open tender, two-stage tender, limited participation tender, closed tender, request for proposals, request for quotations, and procurement from one source (para 16.1). Only two (open tender and request for quotations) can be conducted in the e-procurement system. The Law makes the e-open tender method mandatory for the procurement of a value in the national currency that is equal or below USD 3 million, which is only open to micro, small and medium entrepreneurship entities. Since the legislation does not require the e-procurement system to cover all public procurement methods which are set by the law, element A of the benchmark is not met. Thus, element A is not compliant.

Element B is not compliant. As indicated above, the e-procurement system in Azerbaijan does not encompass all applicable procurement methods and is not accessible to all qualified parties. Based on the statistics provided by the authorities, 59 per cent of a total of 12,102 procurement contracts were concluded through the e-procurement platform in 2022. However, the value of contracts procured through e-procurement was quite low and constituted only 19 per cent of the total procurement value of AZN 6.78 billion in 2022. The data about the number of public and private sector entities active as users of the e-procurement system at the beginning of 2022 as compared to the total number of public and private procurement participants was not clear. The share of the value of open tenders conducted through e-procurement compared to the total volume of open tenders decreased from 44 per cent in 2021 to 35 per cent in 2022. This confirms that e-procurement system was not used sufficiently actively in 2022.

Benchmark 5.4.2.

The following procurement stages are encompassed by an electronic procurement system in practice:

Element	Compliance
A. Procurement plans	✓
B. Procurement process up to contract award, including direct contracting	X
C. Lodging an appeal and receiving decisions	X
D. Contract administration, including contracts modification	X

This benchmark evaluates stages of the procurement methods that are conducted in the electronic procurement system. Stages of the public procurement methods that are not encompassed by the e-procurement system are not considered for the evaluation of this benchmark.

Element A is compliant. Procurement plans and changes in procurement plans are mandatory for sharing on the electronic procurement portal (Paras 4-1.2., 4-1.4 and 50-2.1.18 of the Law on Public Procurement).

Element B is not compliant. The award of contracts is not covered by the e-procurement portal. Also direct contracting and some other procurement methods, as well as the procurement of contracts exceeding the equivalent of USD 3 million are not covered by the electronic procurement system.

Element C is not compliant. The authorities explained that an appeal lodging option is available in the electronic procurement system in Azerbaijan. However, the complaint review decisions are not sent via the e-procurement system in practice, although this is stipulated in the Public Procurement Law (Para 50-2.1.14.).

Element D is not compliant. The authorities confirmed that all contracts procured through e-procurement are signed electronically and uploaded to the portal as required by the law. However, contract management, including contract modifications, is not covered in the e-procurement portal.

Benchmark 5.4.3.

The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable):

Element	Compliance
A. Procurement plans	X
B. Complete procurement documents	X
C. The results of the evaluation, contract award decision, and final contract price	X
D. Appeals and results of their review	X
E. Information on contract implementation	X

All elements under this benchmark are not compliant.

According to the authorities, the procurement plans are publicly available on the e-procurement website[14]. However, procurement plans for single source procurements are not published.

The complete procurement documents are accessible only for tenderers after payment of a participation fee, i. e. these documents are not publicly available online.

According to the authorities, contract award decision and the contract prices are publicly available[15]. However, the results of evaluation are not publicly available.

Appeals and results of their review are not publicly available online.

Information on contract implementation is not publicly available online.

[14] https://www.etender.gov.az/procurement-plan

[15] https://etender.gov.az/main/contracts-concluded

Benchmark 5.4.4.

The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable), in the machine-readable format:

Element	Compliance
A. Procurement plans	X
B. Complete procurement documents	X
C. The results of evaluation, contract award decision and final contract price	X
D. Appeals and results of their review	X
E. Information on contract implementation	X

Elements A-E – not compliant. Procurement plans (element A) and contract award decisions with contract price (element B) are partly published online, but not in machine-readable format.

Box 5.1. Good practice – Enhancement of the E-Procurement Platform

Tender securities for e-tenders are submitted electronically in Azerbaijan thanks to the integration of the e-procurement system with the Central Bank. It is also planned to enable the electronic submission of the tax-payer's certificate. This will shorten the tender preparation time. The web interface of the e-procurement portal will be renewed and is intended to make the process more user-friendly.

A new draft law on public procurement has been prepared to improve the regulation and eliminate existent legal shortcomings. The new law was adopted on 19 August 2023 and shall come into force on 1 January 2024.

Assessment of non-governmental stakeholders

The non-governmental stakeholders who provided feedback to the monitoring team do not see any anti-corruption progress in the public procurement area. They are concerned about a lack of competition in public procurement. There is a high level of single source (direct) procurement in Azerbaijan. The procuring entities are reluctant to apply competition-based procurement methods to achieve the best value for money. There is a perception that technical specifications are often prepared to favour a particular company to win the tender in question. Even when the open tender procedure is applied, the tender announcement is published late leaving potential tenderers with insufficient time to prepare the proposal, thus providing preferential treatment to companies who had illegally obtained prior and/or exclusive information about the tender exercise. Consequently, businesses are not highly motivated to ensure integrity while participating in public procurement. Close relationships with the decisions makers are seen as a more promising way to be awarded public sector contracts than participating in a fair and transparent competitive procurement process. Conflict of interest situations are widespread in the public procurement sector, according to non-governmental stakeholders. As a result, many market segments are not developing to the extent that they would, if fair and transparent competition in public procurement would be promoted.

Besides insufficient competition, non-governmental stakeholders indicated insufficient transparency concerning corruption related issues in public procurement. The application of e-procurement has led to

some improvements in this area. However, only two of seven procurement methods applicable in the country are conducted via the e-procurement system. Non-governmental stakeholders were concerned about the fact that information related to procurement in the territories returned to the government's control in the Western part of the country is not publicly available. Furthermore, it is of concern that the volume of these public sector procurement processes is high and that information on this area of procurement is not even available to the relevant state authorities, thus also infringing citizens' rights to challenge procurement decisions in this area (e. g. through the ombudsman).

Non-governmental stakeholders informed the monitoring team that an increase in single source procurements, especially in procurement in the territories returned to the government's control, in the Western part of the country, was also reported by the Chamber of Accounts to the Parliament of Azerbaijan. It was indicated that 16 per cent of the national budget (about AZN 6 billion) were spent without competition through direct procurement in 2021. According to the report, urgency was the most used justification of single source procurement. 26 of 28 procurement procedures had violations of public procurement legal regulations. The volume of violations amounted to AZN 34 billion in total in 2021, according to the report of the Chamber of Accounts.

6 Independence of judiciary

Judges in Azerbaijan are granted life tenure after a probation period, criteria for the confirmation of judges after this period need to be developed. The Judicial Legal Council (JLC) conducts assessment of the candidates and sitting judges, and makes proposals regarding their appointment, promotion and dismissal to the President, who then submits these proposals to parliament. To strengthen the independence of the judiciary, the JLC should be given broader powers regarding appointment and dismissal of judges and appointment of the presidents of the courts, while the role of the political bodies in making these decisions shall be limited. Procedures of the selection to judges, their evaluation and promotion are established by the legislation, but lack clear criteria to ensure merit-based process. Integrity assessment of candidates entering the judiciary needs to be developed. Budgetary guaranties of judiciary independence should be ensured by the law, including active role of the JLC in this procedure. The transparency of the JLC should be further enhanced by ensuring timely publication of its decisions and their justification. The disciplinary procedure of judges is established by the law, it is transparent, and the due process for a judge in disciplinary proceedings is ensured.

Figure 6.1. Performance level for Independence of the Judiciary is high

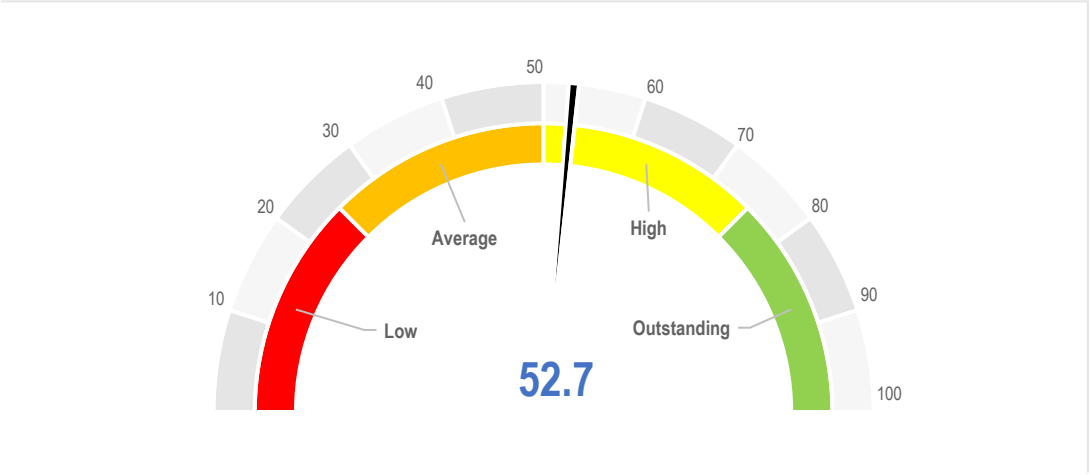
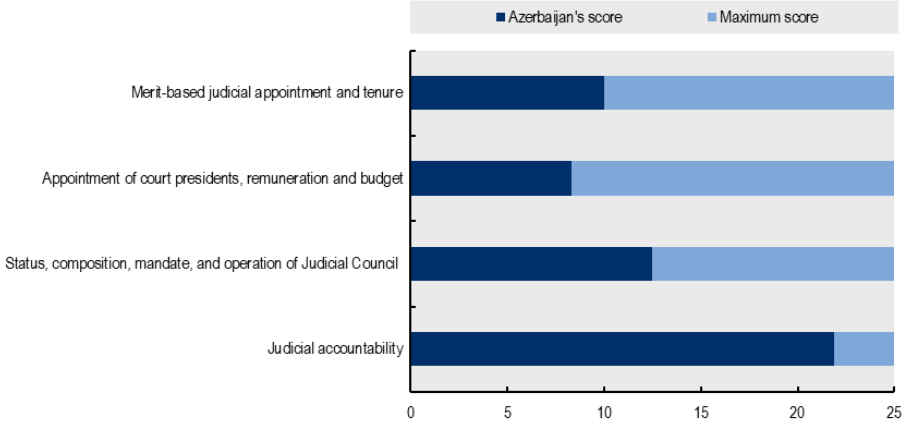


Figure 6.2. Performance level for Independence of Judiciary by indicators



Indicator 6.1. Merit-based appointment of judges and their tenure is guaranteed in law and practice

Assessment of compliance

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

Element	Compliance
A. Judges are appointed until the legal retirement age (100%) OR	0%
B. Clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice (70%)	

Irrevocability of judges in Azerbaijan is guaranteed through the confirmation of judges in office following the probation appointment, i.e. element B. New judges are appointed for the term of three years by the President of the Republic (art. 96 of the Law on Courts and Judges and Article 109 of the Constitution of Republic of Azerbaijan) The President appoints judges based on the recommendation from the Judicial-Legal Council (JCL) (art. 16 of the Law on the Judicial-Legal Council). During this term judges shall take training course at least once a year. At the end of this period their activity is evaluated by the JLC. If the evaluation does not reveal any professional shortcoming, the JLC proposes that the mandate of the judge is extended until the legal retirement age. The legal retirement age is 68 for Supreme Court judges and 66 for other judges. Judges are irremovable and shall not be transferred without their consent (Art. 97 of the Law on Courts and Judges).

The JLC conducts assessment of judges according to the article 13 of the Law on the Judicial-Legal Council and the "Rules for the evaluation of judges' performance" (Rules) set by the JLC on 06.03.2020. Article 13 stipulates types of information that is taken into account during the evaluation (para 13.3) such as opinions of heads of the Supreme Court, appellate courts and of the court where the evaluated judge works, results of the monitoring of the activity of courts, conducted by the Supreme Courte, information collected by the Ministry of Justice , as well as the number of cases directed to mediation in accordance with the Law of the "On Mediation" of Azerbaijan. The law mandates the JLC to determine the procedure and methodology of evaluation of judges (para 13.4).

The evaluation takes place following an annual schedule approved by the JLC (art. 1.7 Rules). The Rules establish the quantitative and qualitative data applicable for evaluation and the procedure of evaluation. Evaluation is not limited to strictly juristic expertise, but also considers a wider array of relevant professional skills, ethical conduct of judge, quality of the court documents, application of the substantive and procedure legal norms, and statistics on workload, on cases reviewed by the Supreme Court, professional training, etc. The Rules establish criteria for the evaluation of judges and provide templates for opinions to be provided by evaluators. According to the Rules, the evaluators have two options – (a) to evaluate the judge compliant, or (b) identify violation(s). – If no professional deficiencies were found in the judge's activity, to powers of judge are extended (para 3.5. of the Rules).

The Rules provide the list of typical violations, e.g. substantive legal norms are violated; procedural legal norms violated, terms of court procedure violated without objective reason (procrastination), etc.. The evaluators need to note the absence or presence of the particular violations. If violations occur in the activity of judge either "occasionally" or "frequently" it should be supported by the concrete examples. The Rules describe what information about the violation(s) shall be provided including type and date of violation,

brief description of violation. The quantitative information is described and evaluated based on statistic criteria such as number of cases by category of cases per year.

The legislation does not set the criteria for evaluation of additional information about the judge, e.g. positive and negative information such as ability to control emotions or infringing reputation of justice or judge while performing duties of judge. The Authorities of Azerbaijan explained that this additional information is optional; it is mainly considered in cases when the evaluation of judge based on the main criteria was not clear.

The monitoring team was concerned that the Rules do not provide sufficiently specify what information should be considered for the evaluation The Rules refer to “information” without specifying the origin of such information (paras. 1.5, 1.6, 2.3, 2.5). The Authorities of Azerbaijan explained the annexes to the rules specify that this information can be is obtained by the JLC and the Ministry of Justice while conducting their judiciary monitoring such as review of complains to the JLC and results of their investigation, disciplinary decisions, statistics on the activity of courts, etc.

Sub-categories of some types of information such as the professional conduct of the judge and non-professional behaviour, etc. have three scale assessment including positive, negative and partial. It is not clear how and in what cases partial assessment is applied. The Rules do not determine how the statistical information about the workload is evaluated. There are no criteria describing the comparative weight of each element of information used for the evaluation of a judge. It is not clear how final decision is made, i. e. in what cases the positive or negative final evaluation decision shall be made, how positive or negative or partial assessment should impact the final decision. Therefore, it is not possible to conclude that the clear criteria for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice.

The monitoring team recommends for the Authorities of Azerbaijan to consider upgrading the criteria for evaluation of judges after the initial appointment from the status of Rules approved by JLC to the level of the primary legislation. At least key requirements should be provided by the primary law, and only the details of the rules left to internal administrative decisions. At the same time, this comment does not affect the assessment of the benchmark 1.1. as to meet the requirement of the setting the clear evaluation criteria by legislation is sufficient.

The monitoring team noted with concern that some of the information considered during the evaluation may hinder individual independence of a judge. For example, information referred to under 2.4.2 or 2.4.3 refers to the quality and justification of the decisions or to the compliance level with the legislation. Such assessment could be used to control the substance of his or her decisions, without using the normal route of judicial appeals. The Authorities of Azerbaijan noted that these criteria relate only to the cases with an appeal and decisions of judge are evaluated within the appeal context.

The procedure for confirming a judge in office after the initial appointment is based on a three-tiered analysis of opinions. Evaluators conduct their assessments in a blind manner, i.e. no authority is aware about the evaluation of others. An appointed member of the JLC prepares a final opinion that includes summary of information received from the evaluating authorities and presents it to JLC. The JLC reviews the final opinion and adopts it with a simple majority of votes. It can decide if the judge is “suitable for current position”, or “there are professional shortcomings in his/her performance”. There is no legal requirement to publish information about the outcomes of the procedural steps online. The Authorities of Azerbaijan stated that information about all meetings and decisions of the JLC is published on its website. The provided examples show that general statistical information about the number of persons selected for the initial judicial training or appointment as judges after the training is published. The Rules foresee participation of a judge whose evaluation is considered at the meeting of the JLC. An appeal is possible. The monitoring team considers procedure for confirming judge in office after the initial appointment as transparent.

As noted above, the irremovability of judges corresponds to option B of this benchmark. The requirement of this benchmark to establish and apply clear criteria for evaluation of judges is not met, therefore Azerbaijan is **not compliant with the element B**.

Benchmark 6.1.2.

A Judicial Council or another judicial governance body plays an important role in the appointment of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly appoints judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	50%
B. The Judicial Council or another judicial governance body prepares a proposal on the appointment of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all candidates for judicial office and makes a justified recommendation to the relevant decision-making body (50%)	

Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

In Azerbaijan, the Judicial Legal Council (JLC) acts as a judicial governance body as required under this benchmark. The Law on Courts and Judges of Azerbaijan establishes the JLC as "an institution responsible for ensuring the organization of the judicial system and the independence of the judges and court system in Azerbaijan, /…/ as well as carrying out other functions of self-governing of the judicial authority". The Law defines the powers and main legal provisions of the operation of the JLC and refers to the Law on Judicial-Legal Council for further regulation of its operation. This Law stipulates that the JLC is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court, and court administration (Article 4), and manages its own budget (Article 5). There were no other judicial councils or similar bodies in the country that should have been considered for the evaluation.

According to the Constitution of Azerbaijan, judges of the courts of first instance are appointed by the President of the Republic of Azerbaijan, and judges of higher courts are appointed by the Milli Majlis upon the submission of the President. The JLC has the power to propose candidates for the appointment of judges, but does not have a power to appoint judges. The political bodies can accept the proposal or reject it (in which case the JLC has to prepare a new proposal), but their discretion is not limited to exceptional cases or clear grounds. Considering this, Element C of this benchmark is applicable in case of Azerbaijan.

The Law on Courts and Judges stipulates that the JLC is "an institution responsible for /…/ organization of electing candidates for the position of judge, evaluating the activity of judges/…/" (Art. 93-1). Evaluation of the activity of judges is the basis for the appointment of judges to the higher courts in Azerbaijan. The Law also indicates that the JLC proposes to the relevant executive body of the Republic of Azerbaijan the appointment of the candidates (Art. 93-3). Exceptional appointment and re-appointment of persons or former judges to the judicial position outside the general competition-based initial selection procedure is also based on the interview and/or proposal of the JLC (Art. 93-4). The Law indicates that the JLC shall

make proposals for the appointment of the candidates to the vacant judicial posts to the President (Article 16).

Onsite discussion confirmed that in practice, the President always followed JLC's recommendations, and never appointed anyone outside the JLC's evaluation.

The Law on Judicial-Legal Council defines what information shall be included in the proposal for appointment of the candidate to the vacant judicial post, including "brief CV and characterizing information; results of the preliminary training and of final interview; information about the professional aptitude, including specialization" (Article 16). The representatives of Azerbaijan explained that the proposals also contain excerpt from the evaluation of the candidates by the JLC and supporting documents that were prepared for the JLC's evaluation.

The monitoring team examined the provided examples of the appointment proposals made by the JLC with the supporting documents and concluded that they contained justified decisions as required by this benchmark The monitoring team found Azerbaijan compliant with the element C.

The monitoring team recommends to further review examples of the proposals by the JLC for the appointment of judges including all supporting documents to ensure that the practice remains compliant with the requirements of this benchmark.

Benchmark 6.1.3.

A Judicial Council or another judicial governance body plays an important role in the dismissal of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly dismisses judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	50%
B. The Judicial Council or another judicial governance body prepares a proposal on the dismissal of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all proposals for dismissal of judges and makes a justified recommendation to the relevant decision-making body (50%)	

Element C – compliant. The Constitution of Azerbaijan provides that the parliament dismisses judges upon the submission of the President in cases when they commit a crime. In other cases, the grounds and procedures of termination of the judicial office are defined by the Law on Courts and Judges of Azerbaijan (Art. 113 and 114). The Law stipulates that if the Supreme Court or relevant executive body sees the need for an dismissal or termination of the authorities of a judge, they have to ask the JLC to institute disciplinary proceedings In the course of the disciplinary proceeding, the JLC can decide if there are grounds for early termination, and if so, it should recommend this decision to the President In case of the written resignation by a judge, his/her death or comparable grounds making it impossible for a judge to continue to exercise duties (paras 1, 3-5 of Article 113), the powers of judge shall be terminated by the JLC itself (Article 114).

The Law on Judicial Legal Council (paras 12.0.8 – 12.0.8-1) provides the same provisions regarding the duties of the JLC to review the proposals for dismissal of judges or consider the grounds of termination of powers of judge and make relevant decision and proposal for the executive power body.

It can be concluded that the JLC of Azerbaijan considers the dismissals of judges in all the cases but does not make the final decision when dismissal of a judge is based on the grounds stipulated in the paras 6-

11 of the Article 113 of the Law on Courts and Judges. Proposals of the JLC are not legally binding for the political bodies which make final decision about dismissal of judges. Therefore, the element C is applicable in case of Azerbaijan when the grounds for the dismissal of a judge set in paras 6-11 of the Article 113 of the Law on Courts and Judges are invoked. The country is compliant with the requirement to have the judicial governance body reviewing all proposals for dismissal of judges and making recommendation to the relevant decision-making body.

Element C also requires that the recommendations by judicial governance body about the dismissal of a judge to the relevant decision-making body should be justified, i.e. justification should be required by the legislation and applied in the practice. The Article 23 of the Law on the JLC requires justification of the disciplinary decisions of the JLC. The representatives of Azerbaijan confirmed that proposals to dismiss a judge by the JLC are justified when presented to the decisions making body. The monitoring team accepted this confirmation, however it recommends to review examples of such proposals of dismissal in the future monitoring, to ensure the continued practice. The monitoring team recommends to further examine the rules and practice of dismissal of the judges in Azerbaijan to decide if the element A of this benchmark could be applicable in separate dismissal cases when the powers of a judge are terminated by the JLC itself based on the grounds listed in paragraphs 1 and 3-5 of the second part of the Article 113 of the Law on Courts and Judges.

Benchmark 6.1.4.

Judges are selected:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

Element A – compliant. Selection of judges is entrusted to the Judicial-Legal Council (JLC) by the Law on Courts and Judges (Article 93-1):

"Judicial-Legal Council is an institution responsible for ensuring the organization of the judicial system and the independence of the judges and court system in the Azerbaijan Republic, organization of electing candidates for the position of judge, evaluating the activity of judges, changing their place of work, promotion in position, bringing to disciplinary liability, as well as carrying out other functions of self-governing of the judicial authority, resolving other issues within their powers related to the courts and judges."

The initial selection procedure is based on a competitive examination of the candidates' skills. A Judges Selection Committee is established by the JLC to carry out selection of candidates for the judicial posts, including inter alia "/…/ to organize written test and oral exam, in a transparent manner, in order to examine their aptitude and worthiness of occupying judicial post, engage judicial candidates in long-term training, to determine their professional aptitude by means of interview". None of the members of the JLC can belong to the JSC (art. 2.2 Charter on the Judicial Selection Committee). Pursuant to article 14 of the Law on the Judicial-Legal Committee, this organ is composed in the following way:

> *"14.1. Judicial-Legal Council shall form the Judges Selection Committee vested with selection of candidates for the vacant judicial posts and composed of 11 members, including judges, Council staff, representatives of the relevant executive body of the Republic of Azerbaijan and the Prosecutor's Office as well as, defence lawyers and act academicians:*
>
> *14.1.1. two judges of the Supreme Court of the Republic of Azerbaijan;*

14.1.2 three judges of the Court of Appeal;

14.1.3. NAR Supreme Court judge;

14.1.4. member of staff of the Judicial-Legal Council;

14.1.5. representative of the relevant executive body of the Republic of Azerbaijan;

14.1.6. representative of the Prosecutor's Office of the Republic of Azerbaijan;

14.1.7. member of the Bar of the Republic of the Republic of Azerbaijan;

14.1.8. law academician.

14.2. Members of the Judicial-Legal Council cannot be simultaneously members of the Judges Selection Committee

The reference to the "relevant executive body" could raise concerns as it empowers the executive power of the state, through a presidential decree, to define which ministry oversees a specific function defined by the legislator. A transfer from one ministry to the other of the power to exercise specific competences relating to the judiciary could affect its independence. As explained onsite, this is justified by the constitutional separation of powers, which implies a right for the executive to define its own institutional organization without any interference from the legislative.

The Authorities of Azerbaijan informed that the Law on Judicial-Legal Council was amended in June 2023 changing the composition of the Committee. The number of the judges from the appeal courts was increased up to four, the representative of the Parliament was added, the Nakhchivan Autonomous Republic (NAR) Supreme Court judge and representative of the Prosecutors' Office were removed.

The long-term training foreseen by legislation is prepared in cooperation with the Judicial Selection Committee (art. 3.0.5 Charter of the Judicial Selection Committee). It used to be one-year long. As explained onsite, this has been reduced to four months of the theoretical and practical (internships in general and specialized courts, study travels to international courts and foreign courts, etc.) training to fill the vacancies. It is questionable if such period is not too short, especially when compared to the training of the new judges in countries where a career system based on training in a school of magistrates, or a judicial training institute exists.

According to Article 93-3 of the Law on Courts and Judges, the selection of the nominees for the judicial post includes the following steps:

"The applicants for the post of judge are submitted to a written exam and to an oral exam. Judges Selection Committee arranges these exams to select candidates.

The results of these exams are evaluated by the Judges Selection Committee. The Judges Selection Committee may engage ad hoc commission in the implementation of this function.

The applicants who have succeeded in these exams are automatically admitted to perform a long-term training period. This training period is organized by the training center. The working places and salaries of the applicants admitted to perform a long-term training will be kept. The financial providing of the applicants who are not working is conducting by the Judicial-Legal Council. The sum of financial providing is defined by the Judicial-Legal Council and paid from the resources assigned for the Council from state budget.

At the end of this training, each trainee is evaluated. The results of this evaluation are based on the considerations made by the Training Center and summarizing interview with the members of the Judge Selection Committee. The evaluation is based on the mark system.

The applicants shall be classified according to their merit, based on the mark obtained.

The results of this evaluation are submitted to the Judicial-Legal Council. The Judicial-Legal Council proposes to the relevant executive body of the Republic of Azerbaijan the appointment of the candidates according to the number of the judge positions. /…/".

In addition, Article 92-3 mentions a "Charter of the Judges Selection Committee approved by the Judicial-Legal Council" (approved on 11 March 2005 with later amendments) as regulating the selection, including the way of formation of the Selection Committee, its powers, rights and duties of its members, and its working procedures.

The "Rules on Selection of non-judicial Candidates to Vacant Judicial Posts," were approved by the JLC on 11.03.2005. As well as the Charter of the Judicial Selection Committee, they give greater details as to the selection procedure, which appears globally satisfactory to assess in a transparent and equitable manner the candidates' merits as well as their specific abilities for a fruitful appointment (art. 2.9 Rules). The competition is advertised (http://jlc.gov.az/hsk_senedler2.php) with the information on the fields covered by the examination questions, list of legislation used in the elaborations of questions, as well as, other relevant information related to the selection of candidates to vacant judicial posts (art. 3.1 Rules). A memo containing the information on written and oral examinations, training stage and final interview procedural issues, and other necessary information related to the selection of candidates to the vacant judicial posts is provided to the candidates (art. 3.8 Rules). Observation by the third party (international, governmental and non-governmental organizations, or media representatives) of the examinations of the candidates to judges is possible (art. 3.17 Rules). Any eligible candidate meeting requirements set by the Constitution of Azerbaijan (see Element B below) can apply. As explained during the onsite, several competitions are open each year, on a continuous basis.

The monitoring team had concerns about the apparently low legal value of the Rules, which has the form of a bylaw of the Council. During the onsite, it has been clarified that, under the constitutional law on normative legal acts, this act qualifies as a legal act of normative character. Pursuant to Article 4.1.4 of the Constitutional law, the decisions of the Judicial Legal Council are "acts of statutory nature." As such it was presented as mandatory and applying to a limited circle of subjects (art. 1.0.3 Constitutional law on normative legal acts). Its validity can be challenged before the administrative chamber of a court. The regulation of the exams of selection of the candidates to judges is rather technical, and mostly deals with the materiality of the organization of the exams. But it would be better to set at least some of the leading principles of the procedure (publicity, transparency, competitiveness, merit-based evaluation, etc.) in the legislation itself.

Element B – not compliant. Element B of the benchmark requires that the decisions to shortlist (if applicable) and determine the winning candidates are made because of the merits of the candidates (experience, skills, integrity). This shall be required by the legislation and applied in the practice.

The Article 126 of the Constitution of Azerbaijan as well as the Article 93 of the Law on Court and Judges requires that the candidates to the position of judge should have inter alia a higher legal education and at least 5 years of experience in specialised legal work.

Requirement of "5 years of experience in specialised legal work," or "work experience in legal profession," depending on the text and the translation, is understood broadly when applied in practice as confirmed by the recent appointment. The former minister (but not the minister of justice) without any judicial experience was appointed as a chairman of the Supreme Court in 2023. The representatives of the CSOs informed that this raised some public discussion if the candidate was eligible considering lack of judicial experience. The other opinion supported appointment as way to introduce innovative approach in judiciary. Nevertheless, the Authorities of Azerbaijan explained during the onsite that being a judge is not the only form of relevant legal experience. The appointed candidate was considered as appropriate considering education (PhD in law from the Sorbonne) and former professional experience, including work in the presidential administration and was managing the Azerbaijan Service and Assessment Network (ASAN). There is no major reason to criticize such an understanding of professional experience in the legal field,

especially for a head of court whose daily role may have less to do with issuing judicial rulings individually than with administering a court, leading a team, and representing the judiciary as a whole. Nevertheless, one should be cautious to contain this interpretation in acceptable limits to avoid undue appointments that may imperil judicial independence and the quality of justice.

The procedure for selecting candidates for the position of a judge is carried out in accordance with Article 93-3 of the Law on Courts and Judges and the Rules for selection of non-judge candidates to vacant judicial posts (the Rules) approved by the Judicial-Legal Council. The law stipulates that the applicants shall be classified according to their merit, based on the mark obtained.

The candidates do a written and oral exam to assess their knowledge of national law. The results of the exams are evaluated by the Judges Selection Committee using the detailed scoring system based on criteria set by the Rules. The successful candidates are automatically admitted to a long-term training. At the end of this training, the trainees are evaluated by the Training Center, at the written exam aiming to assess skills to analyse and apply legislation or to draft court decisions, and concluding interview conducted by the Judge Selection Committee aiming to evaluate the skills relevant to judge's position. All evaluations are based on the score system. The threshold of score of successful candidates is set by the Rules for each stage. Field, type and number of the questions or tasks for all the stages of evaluation are defined by the Rules. The candidates who received the score higher than the one set by the Rules, i. e. more than 60 points, automatically are submitted by the Judges Selection Committee for the consideration of the Judicial-Legal Council which proposes to the relevant executive body of Azerbaijan the appointment of the candidates considering number of the vacancies. The proposal of the Committee contains information about the results of the initial training and the final interview.

The Rules stipulates that the JLC "shall consider the proposals of the Judge Selection Committee about the candidates selected to the judicial posts. Judicial-Legal Council shall review the selection of the candidates as to its compliance with the requirements of the legislation and the present Rules as well as have conversation with candidates" (para 5.4.). The Authorities of Azerbaijan explained that in case of the sufficient number of vacancies, all candidates are recommended for the appointment to judicial positions based on the training and final interview results. If the number of the vacancies is not sufficient to appoint all candidates, the ones with the highest scores of the initial training and the final interview are recommended. Information about the results of the initial training and the final interview is part of the proposal to the relevant political appointing body.

The Rules do not prescribe what shall be discussed during the conversation of the JLC with the candidates. The Authorities of Azerbaijan explained that this conversation aims to help the JLC to refer the candidates to specialization fields considering also opinion (comments) of the Judge Selection Committee but does not impact decisions about recommendation for the appointment.

The Rules indicates that the JLC shall consider the proposal of the Judges Selection Committee on the nominee for the judicial post and if there are no violations in the selection process, to propose appointment of the candidates who have gained minimum or higher marks to a vacant judicial post (para 15.2).It can be concluded that judges are selected according to merits in Azerbaijan as provided by the legislation.

The provided examples of proposals of JLC of the individual candidates for the appointment of judges, discussion during the onsite and references to the online publication of the requirements and results of various stages of the selection process confirm that merit-based selection of judges is applied in practice in Azerbaijan. The selection process appears to be highly competitive, as around 20% of the around 250 candidates who apply each year are successful. According to statistics provided by the Authorities, 663 persons participated in the selection process between 2019 and 2022. Among them, 123 were finally appointed as judges, which represents a 18,6% success rate. The training center operates under the umbrella of the Ministry of Justice. But it has been clarified during the onsite that pursuant to its charter, it works in cooperation with the JLC. Its current vice-rector is, for example, a university professor who is a member of the Judicial Selection Committee.

While the procedure for the merit-based selection of judges is defined in laws and rules, and is applied in practice, the scope of the merits covers only experience and skills, but not integrity. There is no clearly defined integrity assessment in the selection of judges in Azerbaijan. The Constitution of the Republic (Article 126 para 2) and the Law on the Courts and Judges (para 2 of the Article 93) contains some requirements for the candidates to judiciary stipulating that person "having conviction record without having acquittal grounds for criminal proceeding; dismissed from the judicial post based on disciplinary liability" is not eligible. While these elements are related to integrity, they are not sufficient, as per the IAP 5th round Guide, which clarifies that the respective procedures for the assessment of the merits (experience, skills, integrity) should be provided for in the legislation and used in practice.

The representatives of Azerbaijan indicated that at the moment there are no consolidated international standards for the evaluation of integrity of the candidates who wish to enter the judicial system. Therefore, they would appreciate further guidelines and references to good practices in this regard.

Benchmark 6.1.5.

Judges are promoted:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	x
B. According to merits (experience, skills, integrity)	✓

In Azerbaijan, promotion of judges is based on the results of the evaluation of the activity of judge conducted by the Judicial-Legal Council's.

Element A – not compliant. The Authorities of Azerbaijan stated that the website of the JLC (http://jlc.gov.az/shtatjlc.php) lists the number of judges in each court, as well as the number of vacancies in higher, appellate, specialized, and general courts. All the indicated vacancies are open for the filling in and any judge who is interested may apply for promotion, to be appointed to the higher-level court. In addition, the single judicial portal (courts.gov.az) lists the number of actual sitting judges in each court.

Based on the IAP 5th round Guide, procedures are considered competitive when vacancies are advertised online and any eligible candidate can apply. Publishing the number of vacancies in the individual courts cannot be considered as call for the application. For any eligible candidate to be able to apply, the information about the available vacancies should be supported by the information about the requirements for the candidates and about the procedure for the application.

Element B – compliant. The element B of the benchmark evaluates if the judges are promoted according to the merits. Based on IAP monitoring definitions, "according to merits" means that decisions to determine the winning candidates are made because of the merits of the candidates (experience, skills, integrity) and not on other considerations, like political or personal preferences, nepotism, etc.

The promotion of judges in Azerbaijan, as already mentioned, is a process carried out only based on the results of the evaluation of their activities by the JLC. The professional assessment is performed according to the Law on the Judicial-Legal Council (Article 13) and the "Rules for the evaluation of judges' performance" (Rules) set by the Judicial-Legal Council on 06.03.2020.

The Rules establish the quantitative and qualitative criteria as well as the procedure of evaluation. The evaluation takes place following an annual evaluation schedule approved by the JLC (Art. 1.7). Each judge is evaluated every five years. Additional evaluations can take place if a judge asks for a promotion or for a change of job.

The evaluation is based on a three-tiered analysis, including an opinion prepared by the head of the court based on the qualitative as well as quantitative elements; information about the judicial activity provided by the Supreme Court and appeal courts; and information on judicial work and professional trainings as well as disciplinary violations provided by the Ministry of Justice (see also the benchmark 1.1.). A member of the JLC prepares a final opinion that summarises these three evaluation elements and others that he/she may be aware of thanks to the activity of the Council (such as complaints about a particular judge, etc). The JLC decides about evaluation based on the information collected for the evaluation of the judge. The final decision of the Council shall be justified as provided by the legislation. As the conclusion of the assessment, JLC can assess judge as "suitable for /…/ promotion, or transfer." An appeal is possible.

As set by the Rules, the scope of the information applicable for the evaluation of judge includes professional, work, and ethical conduct of judge during the professional activity and outside it, quality of the court documents, application of the substantive and procedure legal norms, statistics on workload, on cases reviewed by the Supreme Court, professional training, reputation, diligence, etc. The requirements of the benchmark, "experience, skills, integrity" are met.

The Law on the Judicial Legal Council indicates that the JLC "makes proposals to the relevant executive authority of the Azerbaijan Republic on changing jobs, position promotions /…/" (para 12.0.4). The Authorities of Azerbaijan explained that in case of the decision of the Council that a judge is suitable for the promotion and availability of the relevant vacancy, the proposal for promotion shall be made or will be made when the necessary vacancy will become available. The law also requires including information about the evaluation of a judge into the proposal for the promotion.

The information, which was considered by the JLC for the evaluation of a judge, is also provided in the motion for the appointment of a judge to the higher court (promotion) (see also benchmark 1.2. element C) and considered by the appointing political bodies (as their decision is to confirm or not confirm the decision of the JLC). If the proposed candidate not appointed, the proposal would be returned to the JLC and it would start the new selection procedure (The Law on the Judicial Legal Council, (para 12.0.4). The appointment to the Supreme Court follows the same procedure (via the evaluation of a judge by the JLC and proposing a judge for the appointment to the political deciding bodies). Azerbaijan is compliant with the requirements of the element B.

Indicator 6.2. Appointment of court presidents and judicial remuneration and budget do not affect judicial independence

Assessment of compliance

Benchmark 6.2.1.

Court presidents are elected or appointed:

Element	Compliance
A. By the judges of the respective court or by the Judicial Council or another judicial governance body	X
B. Based on an assessment of candidates' merits (experience, skills, integrity)	X
C. In a competitive procedure	X

The appointment of judges has been described before. Pursuant to the Constitution of Azerbaijan and the Law on Courts and Judges, court presidents are appointed by the President of the Republic on the proposal

of the JLC. However, the monitoring team has concerns regarding the binding nature of the JCL's proposal on the President (see before). The presidents are not elected by the members of the court themselves. It is not clear whether there is an open competition with applications to identify the best candidate for presidents of courts.

Article 94 of the Law on Courts and Judges states:

"/…/ Chairmen of the courts of the Republic of Azerbaijan, deputy Chairmen and Board Chairmen shall be elected from among the judges of the appropriate courts and be appointed for five years term and, as a rule, may not be appointed to the same position twice. The Chairmen of the Supreme Court and NAR Supreme Court shall be appointed according to the procedure provided for in the paragraph 32 of Section 109 of the Constitution of the Republic of Azerbaijan. Except The Chairmen of the Supreme Court and NAR Supreme Court, chairmen of courts of the Republic of Azerbaijan, deputy Chairmen of the courts of the Republic of Azerbaijan, Board Chairmen shall be appointed, subject to the proposal of the Judicial-Legal Council, according to paragraph 32 of Section 109 of the Constitution of the Republic of Azerbaijan."

Article 109, 32 of the Constitution of Azerbaijan reads: "The President of the Republic of Azerbaijan shall have the following powers: […] to settle other issues that do not fall under the competence of the Milli Majlis of the Republic of Azerbaijan and of the judiciary under the present Constitution." It consequently gives the head of state-wide residuary powers. Only the chairman of the Supreme court and the chairmen of the NARSC are appointed according to a specific procedure in which the JLC seems to have no say. The Azerbaijan authorities insist that the Council participates in the appointment of chairmen as they are chosen among the judges of the relevant courts who are initially proposed by the Council. Moreover, the appointment is based on the already described procedure of evaluation. One may feel this is too remote a participation to ensure judicial independence and that the influence of the JLC should be reinforced.

It follows, regarding benchmark 2.1, that the elements A, B, C are not satisfied.

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

Element	Compliance
A. Was not less than 90% of the amount requested by the judiciary or, if less than 90%, is considered sufficient by the judiciary	X
B. Included the possibility for the judicial representatives to participate in the consideration of the judicial budget in the parliament or the parliament's committee responsible for the budget	X

Element A – not compliant. The provided documents do not allow to assess this aspect very precisely. The answers from the Republic of Azerbaijan state that efforts have been made to improve the financial security of the judicial system as a whole and of the individual judges as well. Efforts seem to have been made as well to improve the buildings, infrastructure, and the equipment of the courts. The amount of budgetary funding requested by the judiciary for 2022 was not indicated. Therefore, it is not possible to compare it with the allocated funding that in 2022 made AZN 133.666.345.

Element B – not compliant. The participation of the judiciary in the budgetary process is limited. The budgets of lower courts and courts of appeal are said to be submitted to the relevant bodies after the opinion given by the JLC. This should be provided by the legislation, and for example included in the remit of the courts' chairmen or the courts' boards. As per the law on courts and judges, they only seem to have their say on the financial aspects of the courts' staffs. Moreover, one may recommend having first the

courts express their needs to the JLC and the JLC providing the executive state power with a synthesis of these demands.

Article 90 of the Law on Courts and Judges reads:

> *"In order to secure necessary conditions for administration of justice by courts according to the requirements of the procedural legislation, each court shall be provided with:*
>
> • *specially equipped premises; emblems of the judicial power: State Flag and State emblem of the Republic of Azerbaijan and Emblem of Justice; and judicial mantle, necessary transport means and technical equipment;*
>
> • *forms, stamps and seal with the name of the and State Emblem.*
>
> *Judges of the Republic of Azerbaijan shall be provided with service identification cards confirming their status.*
>
> *Activity, logistical support of courts shall be provided at the expense of the state budget.*
>
> *Under the separate article in the State Budget of the Republic of Azerbaijan, financial means shall be allocated to finance court activity and improvement of logistical base of courts.*
>
> *Relevant executive bodies*, within the limits provided by the state budget of the Republic of Azerbaijan, shall take necessary measures to secure financing and logistical support of courts activities in due time.*

Before the submission of the proposals for the costs, envisaged for the financial support of courts of first instance and appeal courts to the relevant executive authority, the opinion of the Judicial Council should be obtained.

It has been explained during the onsite that the budget of the first instance courts is administered by the Ministry of Justice which allocates funds to the courts. The Supreme Court and appellate courts manage their budgets. In the drafting of the budget, although no formal or decisive participation is foreseen, the opinion of the JLC is considered, as per art. 90 of the Law on Courts. Besides, one the JLC members is also the member of parliament, the Authorities of Azerbaijan therefore consider that this also helps inform the parliament about the JLC's budgetary needs. One may nevertheless regard this as too indirect, and not amounting to a duly secured and formalised hearing during the parliament's debates on the budget.

To ensure financial autonomy of judiciary, the country may wish to consider introducing constitutional or legislative provision securing the set proportion of the GNP or a proportion of the national budget to the judiciary. Alternative the legal provision could provide for security against diminution of the budget from one year to another.

Nevertheless, recent statistics prove that the budget has been constantly augmenting. According to the Report of the CEPEJ for 2020, "In 2020, Azerbaijan spent 96 538 011 € on the implemented judicial system budget, which is 9.6 € per inhabitant (less than the CoE median) and 0.28% of the GDP (close to the European median). In 2020, 63,4% was spent for all courts, 34,7% for prosecution services and 2% for legal aid. Azerbaijan has one of the lowest judicial system budgets in Europe." In 2021 the budget of the judiciary amounted to 109 960 320 AZN, whereas it amounted to 133 666 345 AZN in 2022.

The Supreme Court enjoys the legislative initiative (art. 96.I C.). It has been confirmed during the onsite visit that this power has been used frequently, especially to reform some provisions of codes of procedure and to modernise the court system. The Authorities of Azerbaijan claim that the JLC indirectly benefits because of this right of legislative initiative as members of the Supreme Court as well as members of Parliament are among the members of the Council. Therefore, it is possible for the JCL to communicate its own opinions regarding the necessary legislative changes.

Benchmark 6.2.3.

The level of judicial remuneration:

Element	Compliance
A. Is fixed in the law	✓
B. Excludes any discretionary payments	✓

Element A – compliant. The judicial remuneration relevant legal provisions are set in the Law on Courts and Judges (Chapter XIX. Financial provision and social security of judges).

The salaries of judges are determined by the law and do not depend on the discretionary power of the head of court or the JLC. It depends on the rank, position, length of service. The law insists that the salaries cannot be reduced which is something that is usually found in constitutions.

The Authorities of Azerbaijan informed that salaries of judges have been increased. No public information exists that would allow a precise comparison between the respective average income of workers in Azerbaijan or of practicing lawyers in Azerbaijan, on the one hand, and judges, on the other. Such information, as well as statistics about the percentage of the GDP that is devoted to justice, the amount of money spent on justice per inhabitant, and a comparison between earning one's living as a judge or as another type of legal professional, would nevertheless be useful. They would offer an indication about the relative attractiveness of the judiciary for the best jurists in the country. This would also allow to understand the public investment in the state's judiciary as well as the relative level of wealth of judges, and the potential risk for corruption that follow. Information gathered onsite from civil society organisations tend to suggest that embracing a judicial career, although more attractive than it used to be, is still less attractive from a financial perspective than practicing law in the private sector. Despite that, during onsite discussion, the Authorities stressed that a starting judge earns around five times the average salary in Azerbaijan. They also think that judges in general earn more than the average practicing private lawyer.

Element B – compliant. While the remuneration of judges is fixed in the law and does not provide for discretionary payments, as analysed above, one source of concern may be related to the provisions related to "encouragement of judges". Article 110 of the law on courts and judges reads:

> *"At the exemplary performance of judicial duties, their long-term and flawless activities, as well as a substantial contribution to improving the efficiency of justice as a result of their activities, the Judicial Council takes against them following incentives:*
>
> - *encouraging with precious gift;*
> - *awarding honorary diploma;*
> - *awarding of an honorary badge;*
> - *submission to the relevant body of executive power proposals on the awarding of a judge."*

This competence is confirmed by article 12.0.5ff of the law on the JCL. One may fear that these provisions may introduce some source of potential inequality among judges, based on a wide discretionary power. The conditions for being offered such kinds of encouragement are not very precise. The first and last provisions are especially problematic as they may imperil the independence of the judge if she can expect to be rewarded for the orientation of his or her decisions. Even more problematic could be the provisions that give the power to courts chairmen to "reward" their staff. If judges are included among this staff, this

may submit the judges to undue influences and pressures. The risk is explicit (art. 57, 66, 83 of the Law on Courts and Judges) in the Supreme Court of Nakhchivan Autonomous Republic, the courts of appeal and the Supreme Court. But it has been explained during the onsite that "staff" does not include judges themselves.

The Authorities of Azerbaijan explained that the English text of the Law that the monitoring team reviewed was not correct, and that "precious gift" and "awards by the executive power bodies" do not represent financial value. It may, for example, be a medal or the recognition as "prominent lawyer." Between 2020 and 2023, three judges were awarded an "honour badge", and three others were awarded an "honour diploma" by the JLC. The existence of this kind of gratification is not perceived as imperilling judicial independence. Nevertheless, one may still have doubts. Even though they might not be of a financial nature, they may influence one judge's decisions, and thus imperil one's independence. If these elements are maintained, legislative criteria or at least guidelines from the JLC should be established.

During the onsite meeting, when asked whether these rewards contradict art. 126.II C, which implies that no other remuneration than their salaries and funds coming from their scientific, pedagogical and creative activities should be acceptable for judges, the authorities answered that as these rewards were not of a financial nature, they were not prohibited.

It follows, regarding benchmark 2.3, that items A and B are satisfied: the level of judicial remuneration is fixed in the law and that discretionary payments seem to be excluded. Nevertheless, symbolic gratifications are not excluded.

Indicator 6.3. Status, composition, mandate, and operation of the Judicial Council guarantee judicial independence and integrity

Assessment of compliance

Benchmark 6.3.1.

	Compliance
The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers	✓

A judicial governance body means a Judicial Council or another similar body that is set up by the Constitution or law, is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court and court administration, has a mandate defined by the law, and manages its own budget.

Compliant. The Judicial-Legal Council (JLC) was established by the law and has been operating since 2005 in Azerbaijan. Pursuant to the Article 93-1 of the Law on Courts and Judges, "Judicial-Legal Council is an institution responsible for ensuring the organization of the judicial system and the independence of the judges and court system in the Azerbaijan Republic, organization of electing candidates for the position of judge, evaluating the activity of judges, changing their place of work, promotion in position, bringing to disciplinary liability, as well as carrying out other functions of self-governing of the judicial authority, resolving other issues within their powers related to the courts and judges."

The mandate of the JLC is defined by a specific law on the Judicial-Legal Council (Article 1) and basically reiterates the Article 93-1.

The functions of the JLC are stipulated by the Article 11 of the Law on the JCL. The Article 12 defines the "authorities" of the JLC. The distinction between "functions" and "authorities" has raised some perplexity. During the onsite, it was explained that this is a common technique of legislative drafting in Azerbaijan, which distinguishes between what may be regarded as the duties ("functions") of an institution on the one hand, and its powers, rights, or ways of fulfilling its duties ("authorities") on the other.

It is regrettable that all these norms, or at least the most important among them, do not appear in the Constitution itself, despite the relevance of a high council of the judiciary for judicial independence. In Azerbaijan, the JLC has no constitutional status which is in general recommended for the judicial governance bodies. First, this would be an additional guarantee for the independence of the judiciary, as this would consolidate its institutional status comparatively to a mere legislative status. Second, a strict reading of the Constitution may lead to questioning if a statute organising preliminary steps of selection of candidates to judiciary and imposing consultations or proposals about appointment of judges could be deemed unconstitutional as unduly limiting the constitutional powers of appointment of judges of the President of the Republic.

The independence of the JCL from the legislative, executive and judicial authorities, as it is proclaimed by Article 4 of the Law on the JLC may also be regarded as possibly unconstitutional, as no fourth kind of power is contemplated in the Constitution. The mere notice of the JLC in the Constitution could secure its position and missions.

The Law on the Judicial Council says that the "head of the relevant executive body of the Republic of Azerbaijan and the President of the Supreme Court of the Republic of Azerbaijan are ex officio members" of the Council. This is not positive provisions regarding the institutional independence of the JLC from the executive branch of government, Chairperson of the Supreme Court. However, the judicial members constitute more than 50 per cent of the members of the Council. The representatives of the executive state power and Chairperson of the Supreme Court are the ordinary members and not the chairperson of the Council. Besides the law ensures independency of the members of the JLC while acting as the members of the Council and bound them only by the Constitution and law of the country (Article 9). The members of the JLC have the right to express opinion on the decision to be taken by the Council and to provide special opinion in case if they do not agree with the decision of the Council fully or partially (Article 27). The law also demands that the members of the JLC "shall take an impartial stand, based on the law and justice, on the issues considered at the sessions of the Council" (Article 27). The Law obliges the member of the JLC in case of actual, potential, assumed COI, also suspicious regarding his/her impartiality to inform the Council and ask to be abstained from participation in the relevant meeting. The law also allows the initiative to ask to remove the member of the JLC by the interested third party in case of possibility of the impartiality (Article 28). The way the decision-making power is shared between the Executive and the JLC in terms of institutional (self-)organisation of the court system is not perfectly clear. Whereas the Law on the JLC grants the JLC the power to "submit […] proposals on the structure of the courts to the relevant executive body* of the Republic of Azerbaijan (location and total number of judges) (art. 11.0.1). However, the Law on Courts and Judges entrusts to the President of the Republic, pursuant to art. 109, 32 C, to determine by each category the organization and location of courts taking into consideration the proposal of the Judicial-Legal Council (art. 21; art. 26; art. 32; art. 43; art. 46-2; art. 61). The latter statute does not grant so much power to the executive branch of state power while defining the number of judges affected to each court. Pursuant to the Law on Courts and judges, indeed, it is repeatedly indicated that the number of judges of each court shall be determined by the Judicial-Legal Council (art. 22; art. 27; art. 30-3; art. 33; art. 44; art. 46-3; art. 53; art. 62; art. 78). The Executive's intervention appears to be more reduced. This inconsistency should at least be solved. The Authorities of Azerbaijan clarified that the President of the Republic defines total number of judges while the JLC identifies number of judges in each individual court.

This Law on the JLC of Azerbaijan stipulates that the Council manages its own budget (Article 5). The security of the funding is ensured by the law stipulating that "the sum of operational expenses in annual funds allocated to finance the activity of the Judicial-Legal Council may not be reduced in comparison to

the previous annual fund" (para 5.1.). The law also ensures financial security of the individual members of the JLC by reserving their salaries at their primary position or payment of the salary from the funds of the Council (Article 8). The law also indicates that the JLC "shall have an independent balance; property from the public estate; seal bearing the image of the National Symbol of the Republic of Azerbaijan and its name, appropriate stamp, emblem, blanks, treasury and bank accounts". The onsite discussion confirmed that these legal provisions are followed in the practice.

Benchmark 6.3.2.

The composition of the Judicial Council and other judicial governance bodies includes not less than half of the judges who:

Element	Compliance
A. Are elected by their peers	X
B. Represent all levels of the judicial system	✓

The composition of the judicial council in Azerbaijan is set by the Article 6 of the Law on the Judicial-Legal Council (JLC) and reads as follows:

> *"6.3. The Judicial-Legal Council shall be composed of 15 members.*
>
> *6.4. Judicial-Legal Council shall be mainly composed of judges, representatives of executive and legislative bodies, prosecutor's office, as well as, bar association in the following manner:*
>
> *6.2.1. head of the relevant executive body* of the Republic of Azerbaijan;*
>
> *6.2.2. President of the Supreme Court of the Republic of Azerbaijan;*
>
> *6.2.3. person appointed by the head of the relevant executive body* of the Republic of Azerbaijan;*
>
> *6.2.4. person appointed by Milli Majlis of the Republic of Azerbaijan;*
>
> *6.2.5.a judge appointed by the Constitutional Court of the Republic of Azerbaijan;*
>
> *6.2.6. two judges of cassation instance court selected by the Supreme Court from among the candidates by the associations of judges;*
>
> *6.2.7. two judges of the Court of Appeal selected by the Judicial Council from among the candidates offered by the associations of judges;*
>
> *6.2.8. judge of appeal instance court (Economic Court of the Republic of Azerbaijan) appointed by the Supreme Court from among the candidates offered by the associations of judges;*
>
> *6.2.11. judge of the Supreme Court of Nakhchivan Autonomous Republic (NAR) selected by the NAR Supreme Court from among the candidates by the associations of judges;*
>
> *6.2.12. two judges of the first instance courts, selected by the Judicial Council from among the candidates offered by the associations of judges;*
>
> *6.2.13. person appointed by the head of the relevant executive body* of the Republic of Azerbaijan;*
>
> *6.2.11. lawyer appointed by the Collegial Board of Bar Association of the Republic of Azerbaijan;*
>
> *6.2.12. person appointed by the General Prosecutor's Office of the Republic of Azerbaijan;*

> *6.5. Head of the relevant executive body of the Republic of Azerbaijan and the President of the Supreme Court of the Republic of Azerbaijan are ex officio members of the Judicial-Legal Council.*
>
> *6.6. The persons appointed to the Judicial-Legal Council by the relevant executive body of the Republic of Azerbaijan, Milli Majlis of the Republic of Azerbaijan, the relevant executive body and the General Prosecutor's Office of the Republic of Azerbaijan shall have high law education and more than five years work experience.*
>
> *6.7. Associations of judges shall offer at least two candidates to one vacancy in the Judicial-Legal Council. The list of candidates to the membership of the Judicial-Legal Council could be rejected only once by the person who selects them. Subsequently nominated persons shall be selected to the Judicial-Legal Council.*
>
> *6.8. Term of office of the members of the Judicial-Legal Council is five years.*

The composition, as well as the requirements for membership (art. 7) and the independence and immunity of the members and more generally their "status" (art. 9ff), in general comply with the most international standards. The composition of the JLC includes more than half of the judges, i.e. 8 members from total 15 members. Two judicial members of the JLC are *ex officio* members, including the President of the Supreme Court, therefore they are not considered as the judges elected by their peers. All categories of judges are represented to avoid the domination of the highest levels in the hierarchy. Therefore, Azerbaijan is compliant with the element B.

The Authorities of Azerbaijan informed about the amendments of the Law on Judicial-Legal Council dated to 9th of June 2023, including changes in the composition of the Council. It will have to be considered and evaluated during the next monitoring.

Element A – not compliant. Judges do not directly elect their representatives as the members to the JLC. The judicial members of the JLC are selected by an external authority among names suggested by the association of judges. Nevertheless, it has been explained during the onsite that most judges belongs to the association that corresponds to the kind of court they work in. Each such association proposes two names and the union of all the professional associations elects the person who will belong to the JCL. Therefore, judges participate in the designation of the judicial members of the JLC but these members are not directly elected by the other judges. Vacancies in the JLC are filled as times goes, so that the JCL is not renewed completely but depending on the vacancies that appear. Each member completes her mandate of five years.

The amendments of the Law on Judicial-Legal Council that were made in 2023 inter alia establishing judges' conference institution for the election of representatives of judges to the Council looks like a positive change in the context of Element A for the future monitoring evaluation.

Benchmark 6.3.3.

	Compliance
The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives)	x

Not compliant. Members not belonging to the judiciary are represented in the composition of the Council to avoid the risk of corporatism, and, hopefully, to encourage the JLC's deliberations and decisions with

wider elements and perspectives. However, only one of the non-judicial members in the composition of the JLC of Azerbaijan represents the non-governmental stakeholders, i. e. lawyer appointed by the Collegial Board of Bar Association of the Republic of Azerbaijan (para 6.2.11.). Remaining non-judicial members of the JLC are the representatives of executive and legislative bodies, and prosecutor's office. One may also recommend the addition of lay members, such as law professors, activists, representatives of human rights institutions, etc., to enrich this kind of input.

It should be also noted that the quorum for the JLC to make decisions is 8. This means that the absence of or the non-appointment of non-judge members does not make it impossible for the JLC to work. One might recommend changing this rule to impose that at least a minority of non-judge members should participate in the deliberation. All members have the same rights and adopt decisions by a majority vote (art. 17.2 of the Law on the Council), except that non-judge members do not participate in disciplinary proceedings. Pursuant to article 17.3 and 17.4 of the Law on the Council,

"17.3. While passing decision within the framework of disciplinary proceedings, except the President of the Supreme Court of the Republic of Azerbaijan and judge-rapporteur, only judge members may vote.

17.4. Only the judge members of the Judicial-Legal Council participate in voting on endorsing or dismissing the motion of the Prosecutor General of the Republic of Azerbaijan regarding criminal prosecution of a judge. Decision of the Judicial-Legal Council on this subject is final."

There is no justification for this exclusion. The fact that the JLC elects its own president allows for the possible election of someone external to the judiciary.

The amendments to the Law on the Council introduced in 2023 increased the representation of the non-judicial members representing the non-governmental sector in the composition of the Council, including legal scholar and representative of legal community. These potentially positive changes will be evaluated in future in the context of the benchmark 3.3.

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

Element	Compliance
A. Are published online	✓
B. Include an explanation of the reasons for taking a specific decision	X

The Authorities of Azerbaijan state that the JLC's activities have been open, public, and transparent since the beginning of the activity of the Council. They indicated that the meetings of the Council are covered by the press and online.

A website (jlc.gov.az) is active with pages both in Azeri and in English. The JLC's decisions on disciplinary proceedings shall be published based on Law (art. 17.6 Law on the Council) and are posted on the website. Information about the disciplinary decisions of the JLC is published with the justification as required by the law. The non-governmental stakeholders also confirmed that sufficient information is published about the activity of the JLC but not always timely. While there is no legal requirement to publish decisions of the JLC besides the disciplinary ones, in practice the Authorities of Azerbaijan stated that all decisions of the Council are published. The monitoring team had no evidence that it is not so. Azerbaijan is compliant with the element A. There is no clear evidence that all other decisions besides the disciplinary decisions of the Council are published with the explanation of the reasons for taking a specific decision (element B – not compliant).

The website of the JLC is rather informative. One may recommend broadcasting the sessions of the JLC live, for example on a dedicated judicial-tv channel or the JLC's website to increase the transparency. Timelier update of the information about the activity of the Council provided in English online would allow broader international community to learn about the Council and its role (the latest news available in English on the 29 March 2023 dated from 27 August 2020).

The Authorities of Azerbaijan noted that the JLC has developed a more proactive communication strategy, especially after 2019. Press releases and access of media have been developed, in line with a communication strategy designed with the Council of Europe. One member of staff is currently responsible for relations with the media and appears as the "speaker" of the JLC. The JLC has also encouraged courts to develop their own communication strategies. The relations with the university and civil society are also more intense. The JLC encourages study trips of students to the courts and organises seminars. Some of its members are currently teaching at the universities. This policy of openness and transparency should be enhanced to reinforce public trust in the judiciary. It should foster public awareness about the values of separation of powers, and judicial independence and help develop a wider rule of law culture.

Indicator 6.4. Judges are held accountable through impartial decision-making procedures

Assessment of compliance

Benchmark 6.4.1.

The law stipulates:

Element	Compliance
A. Clear grounds for the disciplinary liability of judges that do not include such grounds as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" unless the legislation breaks them down into more specific grounds	x
B. All main steps of the procedure for the disciplinary liability of judges	✓

The Art. 111 of the Law on Courts and Judges, stipulates the following elements on which the initiative of the opening of a disciplinary procedure can be based:

- "complaint of the natural and legal persons;
- information published in mass media;
- statutory violations revealed in the course of consideration of the cases in the appellate and cassation instances and special decisions of higher instance courts on the particular judges;
- statutory violations reflected in the decisions of the European Court of Human Rights and the Constitutional Court of the Republic of Azerbaijan;
- statutory violations revealed during the summarizing of the judicial experience and in the course of the judges activity assessment;
- other information received by the person entitled to apply for the institution of disciplinary proceedings."

Ensuring compliance with the principle *nullumcrimen sine lege*, judges shall be called to disciplinary liability on (and only on, as per article 19.1 of the Law on the Council) the grounds exposed by art. 111-1 of the Law on Courts and Judges:

- "either a gross infringement or multiple infringements of the requirements of legislation in the course of consideration of cases;
- breach of the judge ethics;
- gross violation of legislative provisions on the labour or performance discipline;
- failure to comply with the requirement of financial nature contained in Article 5.1 of the Fight against Corruption Law of the Republic of Azerbaijan;
- commission of acts provided by Article 9 of the Fight against Corruption Law of the Republic of Azerbaijan;
- commission of actions unworthy of the good name of the judge."

These grounds, especially the first, the second, and the last ones, are not sufficiently clear and precise. They may lend themselves to extensive interpretations imperilling the individual independence of the judge. They may especially lead to making the content of a specific ruling a cause for disciplinary proceedings. In such a case, judges may hesitate to adopt some specific verdicts. Their independence would, in such a circumstance, be limited.

The Authorities of Azerbaijan noted that both causes and grounds shall be ascertained as prerequisites for establishing legal liability. Thus, holding a judge accountable solely based on the grounds, without due consideration for the underlying causes, would not be possible in practice. The representatives of Azerbaijan believe that provision of the Law on Judicial-Legal Council indicating that "Judges shall be called to disciplinary liability only subject to the existence of the causes specified in the Courts and Judges Act of the Republic of Azerbaijan (Article 19)" ensures that the origin of the procedure of the disciplinary liability will be applied duly without threat for the independence of a judge. The Authorities of Azerbaijan also informed that individuals can file complaints against a judge solely in the cases of the alleged corruption offenses which are specified in the Law on Combating Corruption.

To conclude, the law stipulates the grounds for the disciplinary liability of judges. Nevertheless, some of them are vague and allow interpretations that may imperil the decision-making independence of individual judges. Considering this, Azerbaijan is not compliant with the element A.

The Law "On Courts and Judges" establishes procedures for the disciplinary liability of judges with the details of procedure further set in the Law on Judicial-Legal Council. The procedures for the disciplinary liability of judges stipulated in the law of Azerbaijan describe main stages of the proceedings, including who can initiate, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision-making is organised, what is the role of the judge in questions. Therefore, Azerbaijan is compliant with the element B.

Benchmark 6.4.2.

	Compliance
The disciplinary investigation of allegations against judges is separated from the decision-making in such cases	✓

Compliant. The disciplinary procedure is assigned by the Law to the Judicial-Legal Council (Articles 111-112-1 of the Law on Courts and Judges and Articles 19-24 of the Law on the Judicial-Legal Council). The

Law indicates that the disciplinary investigation of allegations is led by a rapporteur appointed by the President of the JLC from among the judge members of the Council with the aid of the members of the Staff of the JLC. Participation in the vote on a disciplinary proceeding is limited to the members of the Council who belong to the judiciary, except for the President of the Supreme Court and the judge-rapporteur (Article 17.3 of the Law on the Judicial-Legal Council). This later element suggests a welcome separation between the investigation of a case and the decision on this case. The monitoring team recommends stipulating expressly in the legislation that the judge-rapporteur must be absent once the deliberation on the case begins to avoid conflict of interest. The Authorities of Azerbaijan may wish to consider more strict separation of the investigation and decision-making in the disciplinary cases against judges as recommended in the IAP monitoring Guide: "/…/ the same body (staff) do not deal with the investigation and decision-making in the disciplinary cases against judges, as it would result in a conflict of interest. For example, judicial disciplinary inspectors may be put in charge of investigating claims against judges and initiating or starting a disciplinary case against a judge, while a judicial council or a judicial disciplinary panel decides on the allegations of judicial misconduct". Besides, it should be noted that the Consultative Council of European Judges (CCJE) considers that the procedures leading to the initiation of disciplinary action need greater formalisation. It proposes that countries should envisage introducing a specific body or person in each country with responsibility for receiving complaints, for obtaining the representations of the judge concerned upon them and for deciding in their light whether there is a sufficient case against the judge to call for the initiation of disciplinary action, in which case it would pass the matter to the disciplinary authority." (Opinion No. 3 of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraph 68).

Benchmark 6.4.3.

	Compliance
There are procedural guarantees of the due process for a judge in disciplinary proceedings, namely the right to be heard and produce evidence, the right to employ a defence, the right of judicial appeal, and these guarantees are enforceable in practice	✓

Compliant. As it is designed by Chapter IV of the Law on the Council, disciplinary proceedings against judges generally comply with the right to due process:

"Article 20. Rights of the judges who are subject disciplinary proceedings

20.0. Judges who are subject to the disciplinary proceedings shall be entitled to:

20.0.1. get familiarized with the materials of the disciplinary proceedings;

20.0.2. be defended by the judge or member of Bar Association of the Republic of Azerbaijan of his/her choice;

20.0.3. be informed of the time and venue of hearing on disciplinary proceedings;

20.0.4. extend objection to the Member of the Judicial-Legal Council on the grounds mentioned in Article 28 of this Act;

20.0.5. participate at the hearings on the disciplinary proceedings and lodge his/her explanations, applications and documents;

20.0.6. receive a copy of decision on the disciplinary proceedings;

20.0.7. appeal against the decision to call him/her to the disciplinary liability in the specified way.

The Article 21 also sets the term during which the disciplinary case shall be examined and when this term can be extended, participation of the judge and his right to be informed about the sessions of the Council in advance and his/her right to familiarise with the material, duty to make official record refusal of judge to get familiarized with the documents or attend the session, right of the judge to heard. The law also stipulates the elements of the disciplinary decision and order and term for appeal (Article 23). The judge whose disciplinary liability issue has been considered, is also entitled to acquaint with the minutes of the hearing of the Council.

Lodging an appeal against a decision of the JLC, including the ones reflecting the results of the disciplinary proceeding, is possible pursuant to Article 18 and Article 24 of the Law on the Council. Appeal shall be lodged with the Plenary Board of the Supreme Court.

Procedural safeguards for a due process, including the right to be heard and produce evidence, the right to employ a defence as well as a decision in a timely way, are ensured by the legislation in Azerbaijan. The Authorities of Azerbaijan, including the representatives of judges, confirmed that all the due process relevant safeguards are applied in practice and confirmed it with few recent examples during the discussion at the onsite. The monitoring team did not find any obstacles that would prevent enforceability of the procedural guarantees of the due process for a judge.

Benchmark 6.4.4.

	Compliance
There is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice), or such sanctions are not used in practice	✓

Compliant. A provision of the CC addresses the behaviour of judges at the Article 295. “Deliberately delivering unjust judgments, resolutions, rulings and decisions”. The imprisonment is set among the sanctions. Moreover, the disciplinary procedure is not free of connections with criminal proceedings.

The Authorities of Azerbaijan confirmed that there was not any judge convicted based on the Article 295 of CC in 2022. Therefore, considering the explanation provided in the IAP 5th round Guide, since the offence was not used in practice during the year monitored, Azerbaijan compliant with the benchmark.

Assessment of non-governmental stakeholders

The representatives of the CSOs were not positive about the judiciary in the country. They said that there is no trust in the judiciary and courts. Judges and courts are considered as controlled by the Ministry of Justice and influenced by the prosecutors. The non-governmental stakeholders reaffirmed that the public information about the appointments and dismissals of the judges is not sufficient. These decisions are published without the sufficient justifications. Some positive changes were noted in the work of the administrative courts as the processes of consideration of the cases got faster and therefore the terms were shortened. However, the opinion of the non-governmental stakeholders about the improvements in the judicial system in general in Azerbaijan was quite pessimistic. They see no possibility for the individual judges to launch any essential integrity related changes and to enhance the public trust. The essential true political will based reforms are necessary to improve the situation.

7 Independence of public prosecution service

The selection and pre-term dismissal procedures for the Prosecutor General in Azerbaijan are not fully transparent, with the President appointing them subject to Parliament approval. There are no prosecutorial governance bodies, or a body composed of non-political experts involved in the selection of the candidates for the Prosecutor General. there were no cases of appointment or dismissal in 2022. The President of the Republic of Azerbaijan also enjoys the constitutional right to dismiss the Prosecutor General with the consent of Parliament. There were no cases of appointment or dismissal of the Prosecutor General in 2022. Few grounds for the pre-term dismissal of the Prosecutor General are not clear and allow excessive discretion in their implementation.

The lack of a prosecutorial governance body in Azerbaijan adversely impacts the procedures of evaluation, appointment, and promotion of prosecutors. The report recommends Azerbaijan eliminate elements of the mentioned procedures that allow discretionary decision-making, like open voting (in the promotion procedure) and evaluation of a candidate`s outlook in the appointment procedure. While some grounds for disciplinary liability and dismissal of prosecutors are vague, the law stipulates the main steps of the procedure. The Prosecutor`s Office is funded up to its needs from the state budget, and the law sufficiently protects the remuneration of prosecutors.

Figure 7.1. Performance level for Independence of Public Prosecution Service is average

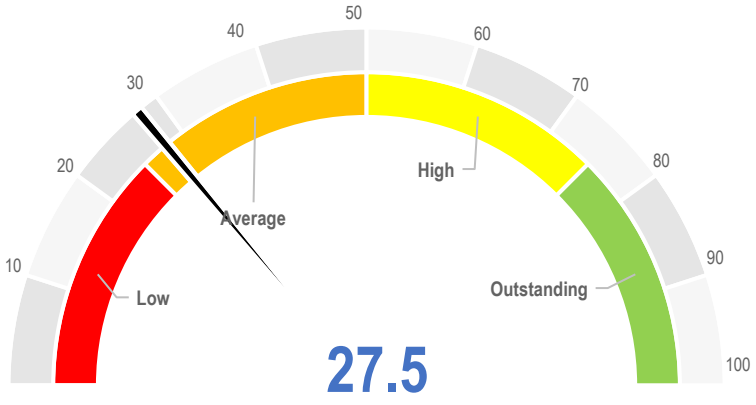
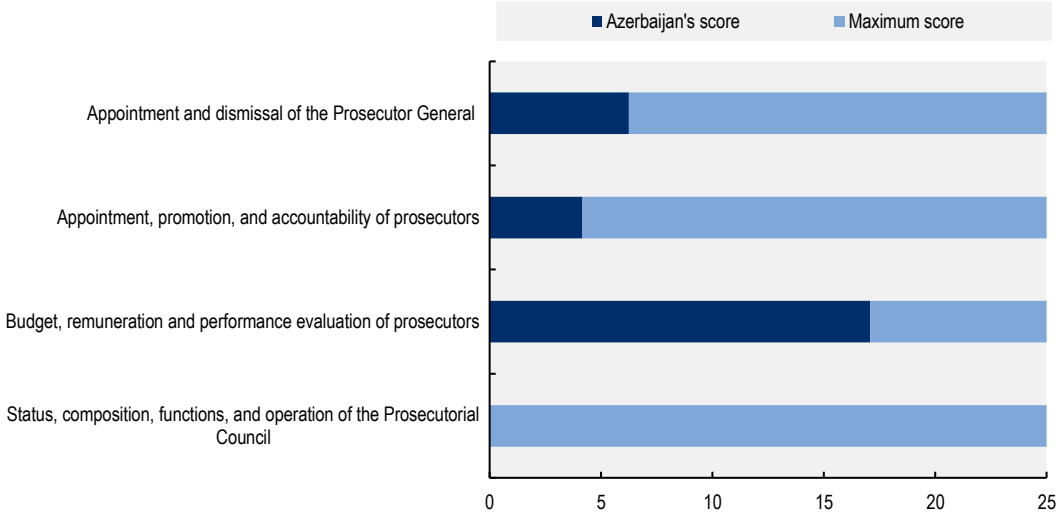


Figure 7.2. Performance level for Independence of Public Prosecution Service by indicators



Indicator 7.1. Prosecutor General is appointed and dismissed transparently and on objective grounds

Assessment of compliance

Benchmark 7.1.1.

A prosecutorial governance body or a committee, which is composed of non-political experts (e.g., civil society, academia, law professors, attorneys, human rights defenders), who are not public officials and are not subordinated to any public authorities, reviews the professional qualities and integrity of all candidates for the Prosecutor General and provides its assessment the appointing body:

Element	Compliance
A. The procedure is set in the legislation	X
B. The procedure was applied in practice	N/A

Element A is not compliant. Pursuant to Article 133 of the Constitution of the Republic of Azerbaijan, the Prosecutor General is appointed by the President with the consent of the Milli Majlis (Parliament). There are no bodies of prosecutorial governance, such as a prosecutorial council or, as an alternative, an independent expert committee, in Azerbaijan that would have any role in the process of selection and appointment of the Prosecutor General.

Element B is not applicable. The Prosecutor General's appointment process did not occur in the reporting year [2022], therefore element B of the benchmark is not applicable. The last appointment of the Prosecutor General took place in 2020.

Benchmark 7.1.2.

The procedure for pre-term dismissal of the Prosecutor General is clear, transparent, and objective:

Element	Compliance
A. Grounds for dismissal are defined in the law	✓
B. Grounds for dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds	X
C. The law regulates the main steps of the procedure	X
D. The law requires information about the outcomes of different steps (if there are several steps) of the procedure to be published online	✓

Element A is compliant. Pursuant to Article 133 of the Constitution of the Republic of Azerbaijan, the Prosecutor General is dismissed by the President with the consent of the Parliament. The following grounds for dismissal of the Prosecutor General are set by the Prosecutor's Office Act and Law "On Service in the Prosecutor's Office": 1) violation of service discipline and improper performance of duties; 2) not complying with the requirements of the "Code of Ethical Conduct of Employees of the Prosecutor's Office of the Republic of Azerbaijan"; 3) medical conclusions about the absence of the possibility to fulfil the duties due to illness lasting more than six months; 4) gross or regular infringements of service or labour discipline;

5) election or appointment to the legislative, executive, judiciary, local government office; 6) filing a written notice of resignation from work on his/her own; 7) conviction for a criminal offence or a court decision on the application of compulsory medical measures, 8) the termination of criminal proceedings against the Prosecutor General on non-exculpatory grounds; 9) court decision on incapacity or partial capacity; 10) detection of non-compliance with conditions established by the Prosecutor's Office Act for candidates for the position of the prosecutor; 11) engagement in activities that are incompatible with the office or being engaged in action incompatible with the prosecutor's position; 12) non-compliance to the position by the decision of attestation commission, and 13) ineptitude for the post, as decided by the Attestation Commission. The authorities noted that the last ground is not applicable to the Prosecutor General based on Article 304.3 of the "Rules on Activity of the Prosecutor's Office," excluding the Prosecutor General from undergoing attestation. The monitoring team recommends making the provisions on legal grounds for pre-term dismissal of the Prosecutor General more definite and not being open to excessively broad interpretation.

Element B is not compliant. Grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow the unlimited discretion of the decision-making body. The law should expressly state all the actions or inaction that can result in dismissal. The grounds should be formulated narrowly and unambiguously, avoiding such general formulations as "breach of oath", "improper performance of duties", or "the loss of confidence or trust." If such grounds are used, the legislation should break them down into more specific grounds.

From the grounds for dismissal mentioned above, at least three are problematic: 1) violation of service discipline and improper performance of duties; 2) gross or regular infringements of service or labour discipline 3) being engaged in action incompatible with the prosecutor's position. These grounds are not specific enough and allow for discretionary legal interpretation, for example, what kind of infringements of service discipline can be considered "gross infringement" or "improper performance of duties", or what action or inaction may constitute an action incompatible with the prosecutor's position. Specifically, Article 34 of the Prosecutor's Office Act provides for the following grounds for dismissal: being engaged in activity incompatible with the prosecutor's position; being an investigator or detective of the prosecutor's office; or actions incompatible with the prosecutor's position. While Article 30 of the Prosecutor's Office Act further breaks down into more specific details the concept of "activity incompatible with the prosecutor's office", the concept of "actions incompatible with the prosecutor's position" is not further detailed in the law. In addition, although "Rules on the Activity of the Prosecutor's Office" include more details on the elements of the service discipline and labour discipline, neither law nor Rules further explain what kind of breaches of service or labour discipline might actually lead to dismissal or what are the characteristics of gross infringement and action incompatible with the prosecutor's position. The authorities clarified that "gross" relates to the level of severity of an offence, but this explanation also leaves a wide margin of obscurity.

Element C is not compliant. Except for Article 133 of the Constitution of the Republic of Azerbaijan, there is no other primary law that would regulate the main steps of the procedure for pre-term dismissal of the Prosecutor General.

Element D is compliant. The law does not clearly identify and regulate the separate main steps of the procedure of early termination of the powers of the Prosecutor General. It can nevertheless be implicitly concluded that it should include such steps as 1) submission of the President to the Parliament; 2) consideration of the submission by the Parliament with a decision on granting or denying consent to the dismissal, and 3) adoption by the President of an order on pre-term dismissal of the Prosecutor General, provided that the consent of the Parliament was obtained. To comply with element D of this benchmark, it is necessary that the law require the outcomes of every step (if there are some) of the procedure to be published online.

According to article 53 (sentence 4) of the Parliament's Rules of Procedure (adopted in the form of a law), minutes and records of open parliamentary sessions are subject to official publication. The Government

assured that in the event of the President's submission to the Parliament, the information about the fact of such a submission must be voiced in a parliamentary session and consequently be published in minutes and records of that session based on article 53 (sentence 4) of the Rules of Procedure. As for the next step, the law provides in article 53 (sentence 2) of the Parliament's Rules of Procedure that decisions made by the Parliament at open sessions on issues specified in paragraphs 6 to 20 of article 95 (I) of the Constitution (paragraph 11 mentions giving consent to the dismissal of the Prosecutor General upon the submission of the President) are published in the "Azerbaijan" newspaper within three days following its adoption.

However, article 88(IV) of the Constitution stipulates that a parliamentary session can be held behind the closed doors, and the legislation does not elaborate on the specific grounds or restrictions for taking that decision. In such an event, neither the minutes and records of the closed session nor the decision of the Parliament on giving or denying consent to the dismissal are published (as seen from article 53 (sentences 2 and 4) of the Parliament's Rules of Procedure). In the opinion of the monitoring team, it would be beneficial for building trust in the Prosecutor's Service if the law would expressly insist on the open consideration of these particular issues (review of the submission itself and granting or denying consent to the dismissal of the Prosecutor General) in the Parliament. However, such a discretion in holding closed parliamentary sessions alone is not enough to recognize this element of the benchmark as not compliant, since the benchmark looks into the general requirement of publication of information about the outcomes of different steps of the procedure but does not speculate on the potential options of its application in practice.

As for the final step, the law (article 113 (II) of the Constitution) provides for the publication of all decisions (decrees and orders) of the President (including the one on the early dismissal of the Prosecutor General).

Benchmark 7.1.3.

	Compliance
There were no cases of dismissal of the Prosecutor General outside the procedure described in benchmark 1.2	N/A

The benchmark is not applicable because there was no dismissal of the Prosecutor General in 2022.

Indicator 7.2. Appointment, promotion, and accountability of prosecutors are based on fair and clear mechanisms

Assessment of compliance

Benchmark 7.2.1.

All prosecutors (except for Deputies Prosecutor General) are selected based on competitive procedures and according to merits:

Element	Compliance
A. All vacancies are advertised online	X
B. Any eligible candidate can apply	X
C. Prosecutors are selected according to merits (experience, skills, integrity)	X

The main steps of the recruitment process, including principles, specific requirements for candidates, grounds for denial of candidates, participating/deciding bodies, and criteria for evaluation of candidates, are regulated by the Constitution, the Law "On Service in the Prosecutor's Office", the statute "On Rules of Competition for Candidates for Recruitment for the Prosecutor's Office" endorsed in 2001, and the "Rules on Activity of the Prosecutor's Office". Candidates are recruited to the Prosecutor's Office through a competition that is open to all eligible external candidates. A competitive procedure where external candidates can participate is applicable only to the initial recruitment. Recruitment for all other positions is entirely internal.

Element A and B are not compliant. According to clause 128.15 of the "Rules on Activity of the Prosecutor's Office," an announcement on opening the recruitment procedure must be published in the official newspaper. It is also published on the Prosecutor's Office's official website. In 2022, the vacancy announcement was published in April, with the application deadline set for 30 September, allowing all eligible candidates to apply properly.

According to the Monitoring Guide, all elements under the benchmark require that the respective procedures be provided in the legislation and applied in practice. If any element does not apply to all positions or candidates [except for deputy Prosecutor General], the respective element will not be met. In accordance with Article 1(5) of the "Rules of Competition for Candidates for Recruitment for the Prosecutor's Office," a candidate may also be recruited to the office (transferred from courts and other law enforcement bodies or positions responsible for coordination of activities, legislative and organizational maintenance of law enforcement bodies, and those holding scientific degrees bypassing standard selection procedures). That renders elements A and B non-compliant.

Element C is not compliant. The absence of any of the three selection criteria required under the element C of benchmark 2.1 renders the element C not compliant. The current legislation does not clearly mention either "experience" or "integrity" among the criteria for the selection of prosecutors. Criterion "skills" can be inferred from such elements as "theoretical knowledge, ability to apply legal acts properly, logic ability, fluency in foreign languages, and other personal qualities".

In addition, the selection competition consists of qualifying examinations (a written exam and a case exam) and an interview. Candidates who pass both the test exam and case exam are allowed to attend an interview that is conducted to determine whether they have the necessary qualifications to work in the prosecutor's office.

Candidates for advertised vacancies are selected based on the results of the competition, their theoretical knowledge, ability to apply legal acts properly, outlook, logic ability, fluency in foreign languages, and other personal qualities necessary for employment as a prosecutor.

The results of the competition are determined by summing up the candidate's pass marks in the qualification exams and in the interview. Based on the results of the competition, the commission decides whether to recommend the candidate to the prosecutor's office.

Decision on candidates to be recommended is made by the Commission by a majority vote in open voting. The list of candidates recommended for the relevant vacancies is submitted to the Prosecutor General along with an opinion on them. A successful candidate is appointed to the vacant position by the order of the Prosecutor General.

The monitoring team is concerned with discretionary elements of the selection procedure, and specifically, 1) the use of voting by the Commission leaves a margin for subjective evaluation of candidates` merits. With that, merit-based procedures applied at the earlier stages of selection partly lose their meaning; 2) lack of clear criteria and methodology for evaluation of candidates at the interview stage. Elements that are evaluated at the interview stage, like candidates` outlook and personal qualities necessary for employment as a prosecutor, leave space for discretionary evaluation; 3) no legal act puts an obligation on the Prosecutor General to appoint candidates to vacant positions according to their score at the selection. The Prosecutor General may use his discretion in this regard.

Benchmark 7.2.2.

All prosecutors (except for Deputies Prosecutor General) are promoted based on competitive procedures and according to merits:

Element	Compliance
A. Vacancies are advertised to all eligible candidates	X
B. Any eligible candidate can apply	X
C. Prosecutors are promoted according to merits (experience, skills, integrity)	X

The Law “On the Service in the Prosecutor's Office” establishes the right of prosecutors to apply for promotion and the authority of the Prosecutor General to approve promotions. However, the promotion of prosecutors is not based on competitive procedures and merits (experience, skills and integrity).

Element A is not compliant. According to Article 335.2 of the “Rules on the Activity of the Prosecutor's Office”, information on vacancies (in all classifications except for the first and second classification positions) shall be posted on the official website of the Prosecutor’s Office. The authorities stated that, in 2022, vacancy announcements for promotion were not posted on the website, while the media were informed of appointments (promotions) post factum.

Element B is not compliant. With vacancies not being posted on the website of the Prosecutor's Office and not being advertised in any other manner available to all eligible candidates, they have had limited opportunities, if any, to apply.

Element C is not compliant. The legislation does not mention either “experience” or “integrity” among the criteria for promotion of prosecutors. Such features as “exemplary professional performance, as well as scientific and professional achievements” are not enough to be qualified as “skills” for the purposes of the

element. The absence of any of the three criteria required under the benchmark makes the element C not compliant.

In addition, according to the monitoring Guide, all elements require that the respective procedures be provided in the legislation and applied in practice. If any element does not apply to all positions or candidates [except for deputy Prosecutor General], the respective element will not be met. During the on-site, the authorities also stated that pursuant to Article 11.2 of the Law "On the Service in the Prosecutor's Office", in exceptional cases, based on justified service needs and with the approval of the Collegial Board of the Prosecutor General's Office, the Prosecutor General may promote the employees of the prosecution service without restrictions on classification, Elements A, B and C are not compliant from this angle as well.

Benchmark 7.2.3.

Clear grounds and procedures for disciplinary liability and dismissal of prosecutors are stipulated:

	Element	Compliance
A.	The law stipulates grounds for disciplinary liability and dismissal of prosecutors	✓
B.	Grounds for the disciplinary liability and dismissal are clear and do not include such grounds as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" unless the legislation breaks them down into more specific grounds	x
C.	The law regulates the main steps of the disciplinary procedure	✓

Element A is compliant. The Law "On Service in the Prosecutor's Office" (Article 7.3, 26.1, and 26.5) and the Prosecutor's Office Act (Article 33 and 34) stipulate the following grounds for the disciplinary liability of prosecutors:1) violation of service discipline and improper performance of their duties; 2) not complying with the requirements of the "Code of Ethical Conduct of Employees of the Prosecutor's Office of the Republic of Azerbaijan" in relation to the prosecutor's office, 3) failure to comply with the requirements specified in Paragraph 5.1 of the Law "On Combating Corruption", or committing offences referred to in article 9 of the Law "On Service in the Prosecutor's Office" (if they do not entail administrative or criminal responsibility); 4) loss of service card on the fault of the employee. In addition, the Law "On Service in the Prosecutor's Office" (Article 29.2) and the Prosecutors Office Act (Article 34) provide for exhaustive grounds for dismissal of prosecutors.

Element B is not compliant. Grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow the unlimited discretion of the decision-making body. The law should expressly state all the actions or inaction that can result in dismissal. The grounds should be formulated narrowly and unambiguously, avoiding such general formulations as "breach of oath", "improper performance of duties", or "the loss of confidence or trust." If such grounds are used, the legislation should break them down into more specific grounds.

Out of the grounds mentioned in the law, at least three are problematic: 1) violation of service discipline and improper performance of duties; 2) gross or regular infringements of service or labour discipline 3) being engaged in actions incompatible with the prosecutor's position. These grounds are not specific enough and allow for discretionary legal interpretation, for example, what kind of infringements of service discipline can be considered "gross infringement" or"improper performance of duties", or what action or inaction may constitute an action incompatible with the prosecutor's position. Specifically, Article 34 of the Prosecutor's Office Act provides for the following grounds for dismissal: being engaged in activity incompatible with the prosecutor's position, being an investigator or detective of the prosecutor's office, or

taking actions incompatible with the prosecutor's position. While Article 30 of the Prosecutor's Office Act further breaks down into more specific details the concept of “activity incompatible with the prosecutor's office”, the concept of “actions incompatible with the prosecutor's position” is not further detailed in the law. It is recommended that Azerbaijan explicitly define this concept in the law.

In addition, although “Rules on the Activity of the Prosecutor's Office” include more details on the elements of the service discipline and labour discipline, neither law, nor Rules further explain what kind of breaches of service or labour discipline might actually lead to dismissal, or what are the characteristics of gross infringement and action incompatible with the prosecutor's position. The authorities clarified that “gross” relates to the level of severity of an offence, but this explanation also leaves a wide margin of obscurity.

Element C is compliant. The Law “On Service in the Prosecutor’s Office” regulates the main steps of the disciplinary proceedings. The Law contains sufficient details about the main steps of the process. The disciplinary liability of military prosecutors is regulated by this Law, the “Disciplinary Charter of Military Forces of the Republic of Azerbaijan,” and other laws.

Benchmark 7.2.4.

	Compliance
The disciplinary investigation of allegations against prosecutors is separated from the decision-making in such cases	X

According to Article 28.2 of the Law "On Service in Prosecutor's Offices", the procedure for conducting a disciplinary investigation is determined by the Prosecutor General of the Republic of Azerbaijan. According to Article 156.1 of "Rules on the Activity of the Prosecutor's Office", the Service Investigations Department of the Prosecutor General's Office conducts disciplinary investigations. The designated prosecutor of the Service Investigations Department requires necessary documents, references, and explanations. If possible, the explanation report of the prosecutor under disciplinary investigation is received. This can also be done remotely. Based on the collected information, the prosecutor of the department draws up a reasoned opinion if there are all elements of a disciplinary offence in a prosecutor's act or omission, and depending on the nature of the opinion, a suggestion to impose or not to impose a disciplinary punishment on the prosecutor subjected to a disciplinary investigation. According to Article 157.4 of the "Rules on the Activity of the Prosecutor's Office", the files of disciplinary investigation along with a reasoned opinion shall be submitted to the Prosecutor General, who can require further investigation by the Service Investigations Department or refer the files of disciplinary investigation to the Disciplinary Commission for consideration. If a violation of the rules of ethics is detected during the disciplinary investigation, the relevant part of the collected material and a separate opinion shall be submitted to the Prosecutor General and sent to the Ethical Conduct Commission for consideration.

According to the "Rules on the Activity of the Prosecutor's Office" (Article 32), the Disciplinary Commission is composed of seven members appointed by the Prosecutor General from among the candidates selected by the Board of the Prosecutor General. It is an ad hoc institution established for the purpose of considering the issue of disciplinary liability of prosecutor’s office employees, including prosecutors, by reviewing the collected materials on alleged violation of executive and labor discipline. The Disciplinary Commission examines the material collected as a result of the service inspection and submits an opinion on the application of disciplinary punishment. According to the Prosecutor's Office Act (Article 10), the Prosecutor General, within the framework of his/her competence, decides on the application of disciplinary measures.

Technically, there are two different bodies and proceedings dealing with disciplinary investigation and pre-decision making in disciplinary proceedings. However, in substance, the requirements of the benchmark are not met since the Prosecutor General has a role both in the investigation and the decision-making stages of the disciplinary proceedings. The role of the Prosecutor General in the transfer of disciplinary investigation files from the Service Investigation Department to the Disciplinary Commission, and particularly, his/her right to return the files for further investigation, implies the review of the disciplinary investigation files and deciding on the sufficiency of the collected evidence. In addition, the Prosecutor General also finally decides whether to apply the disciplinary sanction or not. Considering that, both stages of disciplinary proceedings are not entirely separate.

Indicator 7.3. The budget of the public prosecution service, remuneration and performance evaluation of prosecutors guarantee their autonomy and independence

Assessment of compliance

Benchmark 7.3.1.

The budgetary funding allocated to the prosecution service:

Element	Compliance
A. Was not less than 90% of the amount requested by the prosecution service or, if less than 90%, is considered sufficient by the prosecution service	✓
B. Included participation of representatives of the prosecution service in consideration of its budget in the parliament or the parliament's committee responsible for the budget, if requested by the prosecution service	✓

Element A is compliant. According to information provided by the authorities, the Prosecutor's Office requested 96,333,690 manats from the state budget for 2022 and received 86,432,381 manats, which makes up 89.72% of the requested amount. Nevertheless, compliance under the benchmark is met, given that the prosecutor's office received additional budgetary funding that is made up of a percentage of funds recovered and secured by the prosecutor's office for the state budget over the year. Along with percentage payments, the prosecutor's office received 91,341,937 manats, which makes up 94.81% of the requested amount.

Element B is compliant. The PGO took part in the deliberation of its budgetary funding for the 2022 with the Ministry of Finance in procedures preceding the submission of a budget proposal to the Parliament. The PGO submitted a detailed budget proposal to the Ministry of Finance, including the upper limit of expenses for each department, approved norms for current expenses, and other information. For this reason, representatives of the Prosecutor's Office did not request participation in the consideration of the 2022 budget by the Parliament or the parliament's committee responsible for the budget.

Benchmark 7.3.2.

The law protects the level of remuneration of prosecutors and limits discretion:

Element	Compliance
A. The law stipulates guarantees protecting the level of remuneration of prosecutors (70%) OR The level of remuneration is stipulated in the law (100%)	70%
B. If there are additional discretionary payments, they are assigned based on clear criteria	X

Element A is compliant (70%). The Law "On the Service in the Prosecutors' Office" stipulates that the remuneration of prosecutors consists of salary, bonuses for rank and seniority, and other benefits provided by the legislation. The monthly salary of the Prosecutor General is set at a specific amount by the decree of the President of the Republic of Azerbaijan on the material and social security of the prosecutors of the Republic of Azerbaijan. Further, the Cabinet of Ministers, in accordance with Articles 35 and 38 of the Prosecutor's Office Act, approves the monthly official salaries of the prosecutor's office employees and additional payments, the amount of which corresponds to the service ranks. In addition, prosecutors receive a monthly salary supplement of 1.25 times their official salary. According to the Law "On the Budget System,", salaries and salary supplements shall not be subject to cut-offs regardless of the situation with budget receipts. Such safeguards extend to the remuneration of prosecutors, which is funded from the state budget. Nevertheless, the level (specific amounts) of remuneration for prosecutors is not stipulated in the law.

Element B is not compliant. Heads of structural units (superiors) may suggest that prosecutors of respective units be awarded incentives listed in Article 23 of the Law "On Service in the Prosecutor's Office". It is under the discretion of the Prosecutor General to award such incentives, including monetary bonuses of up to 25% of their monthly salary, to prosecutors for exemplary performance of official duties, long, flawless service or carrying out work of particular importance. The criteria as put down in the Law are vague and allow for wide discretion in their application. The Authorities of Azerbaijan assured that this provision has never been applied in practice for the last ten years.

Benchmark 7.3.3.

Performance evaluation of prosecutors is carried out by:

Element	Compliance
A. Prosecutorial bodies (70%)	A (70%)
B. Prosecutorial Council or another prosecutorial governance body (100%)	

Pursuant to Article 14 of the "Law on Service in the Prosecutor's Office" and paragraph 152.1 of the "Rules on the Activity of the Prosecutor's Office", prosecutors undergo performance evaluations. The evaluation starts every year no later than December 1 and is completed by January 10 of the following year. The evaluation period covers the entire calendar year. The "Rules on the Activity of the Prosecutor's Office" regulate the process of performance evaluation (criteria, process, assessment method, etc.). According to Article 153.2 of the Rules, performance evaluation shall be carried out by the immediate superior of the evaluated prosecutor.

In addition, all prosecutors, except for the Prosecutor General, the first deputy and deputies of the Prosecutor General, members of the Supreme Attestation Commission of the Prosecutor General's Office, the prosecutor of the Nakhchivan Autonomous Republic, the Military Prosecutor of the Nakhchivan Autonomous Republic, and the Baku city prosecutor, undergo attestation every 5 years. More exceptions are provided by the "Rules on the Activity of the Prosecutor's Office". According to paragraph 304 of the Rules, attestation is carried out for the purpose of determining whether the prosecutor is suitable for the position he/she holds, to reveal the possibility of using his/her capabilities, to promote the professional development of prosecutors, to determine the necessity of raising the level of training or retraining, and to determine the timely promotion, dismissal or transfer to a lower position. The evaluation of the prosecutor's work is not explicitly mentioned as one of the purposes of attestation, though it can be implied based on the purposes and proceedings of the attestation. The proceedings of attestation are stipulated by the articles 305–313 of the "Rules on the Activity of the Prosecutor's Office". During attestation, the analysis of a prosecutor's work, information about service activities, relationships with colleagues, causes of deficiencies in his/her performance and proposals for their elimination, and other information, drawn up by his/her supervising prosecutor are being considered. In addition, the Attestation Commission reviews documents characterizing the prosecutor's service and personal qualities that are submitted to the commission by the Personnel Department.

The attestation commission can make suggestions/recommendations on the elimination of deficiencies in the prosecutor's performance and behaviour, the expediency of employing the prosecutor in another position, and the improvement of his/her work. According to Article 312.9 of the "Rules on the Activity of the Prosecutor's Office", when giving evaluations and recommendations, the Attestation Commission considers the results of the service performance of prosecutors.

Throughout the course of attestation, a prosecutor is assessed with points. The maximum total number of points a prosecutor can score is fifteen. To successfully pass the certification, a prosecutor must score at least eight points. Prosecutors who score at least twelve points are recommended for inclusion on the Reserve List.

There is not the Prosecutorial Council or other prosecutorial governance body in Azerbaijan, as understood for the purposes of this monitoring.

Indicator 7.4. The status, composition, functions, and operation of the Prosecutorial Council guarantee the independence of the public prosecution service

Background

Article 11 of the Prosecutor's Office Act establishes the Collegial Board under the Prosecutor General's Office. It is a consultative body presided over by the Prosecutor General. The Collegial Board is composed of the Prosecutor General, his/her deputies, and all other senior employees of the PGO ex officio. The composition of the Collegial Board under the Prosecutor General's Office is approved in accordance with the Paragraph 32 of the Article 109 of the Constitution of the Republic of Azerbaijan.

The Collegial Board is a management body of the Prosecutor General's Office, and not a self-governing body of prosecutors that shall be composed of prosecutors elected by their peers representing all levels of the public prosecution service, would have non-prosecutorial members, and would be operating independently of the Prosecutor General and the executive. It can therefore be concluded that at the time under monitoring (2022), Azerbaijan did not have a prosecutorial governance body according to the definition used for the monitoring.

Given that, all benchmarks under this indicator are scored as not compliant.

Assessment of compliance

Benchmark 7.4.1.

	Compliance
The Prosecutorial Council and other prosecutorial governance bodies function based on the Constitution and/or law that defines their powers	X

There was no Prosecutorial Council in the assessment period, and thus, the country is not compliant with the benchmark.

Benchmark 7.4.2.

The majority of the Prosecutorial Council and other prosecutorial governance bodies is composed of prosecutors who:

Element	Compliance
A. Are elected by their peers	X
B. Represent all levels of the public prosecution service	X

There was no Prosecutorial Council in the assessment period, and thus, the country is not compliant with the benchmark.

Benchmark 7.4.3.

	Compliance
The composition of the Prosecutorial Council and other prosecutorial governance bodies includes at least 1/3 of non-prosecutorial members with voting rights who represent non-governmental stakeholders (e.g., civil society, academia, law professors, attorneys, human rights defenders)	X

There was no Prosecutorial Council in the assessment period, and thus, the country is not compliant with the benchmark.

Benchmark 7.4.4.

The decisions of the Prosecutorial Council and other prosecutorial governance bodies:

Element	Compliance
A. Are published online	X
B. Include an explanation of the reasons for taking a specific decision	X

There was no Prosecutorial Council in the assessment period, and thus, the country is not compliant with the benchmark.

Benchmark 7.4.5.

The Prosecutorial Council or other prosecutorial governance bodies play an important role in the appointment of prosecutors:

Element	Compliance
A. The Prosecutorial Council or another prosecutorial governance body directly appoints prosecutors. The role of the Prosecutor General (if involved at all) is limited to endorsing the Council's decision without the possibility of rejecting it (100%) OR	X
B. The Prosecutorial Council or another prosecutorial governance body prepares a proposal on the appointment of a prosecutor that is submitted to the Prosecutor General, that may reject it only in exceptional cases on clear grounds explained in the decision (70%) OR	
C. The Prosecutorial Council or another prosecutorial governance body reviews all candidates for the position of a prosecutor and makes a justified recommendation to the relevant decision-making body or official (50%)	

There was no Prosecutorial Council in the assessment period, and thus, the country is not compliant with the benchmark.

Benchmark 7.4.6.

The Prosecutorial Council or other prosecutorial governance bodies play an important role in the discipline of prosecutors:

Element	Compliance
A. The Prosecutorial Council or another prosecutorial governance body directly applies disciplinary measures or proposes disciplinary measures to the relevant decision-making official that can be rejected only in exceptional cases on clear grounds explained in the decision	X
B. If the Prosecutor General is a member of the Prosecutorial Council or other prosecutorial governance bodies dealing with disciplinary proceedings, he or she does not participate in decision-making on the discipline of individual prosecutors	X

There was no Prosecutorial Council in the assessment period, and thus, the country is not compliant with the benchmark.

Assessment of non-governmental stakeholders

In the assessment of non-governmental stakeholders, the general public trust in independence of prosecutors, including within the Directorate, is low. Such perception is based also on the low level of criminal investigations in high level corruption allegations.

8 Specialized anti-corruption institutions

The Anti-Corruption Directorate ("Directorate"), within the Prosecution Service of the Republic of Azerbaijan, is a dedicated institution for investigating corruption. Procedures for the appointment of the head of the Directorate are not transparent, with the President of the Republic of Azerbaijan and the Prosecutor General having the decisive role. Staff of relevant structural units of the Directorate specialize in detection and investigation of corruption. While the law allows the transfer of corruption investigations from the Directorate to another investigative body, it never happened in 2022. There is no dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including those from corruption. To this end, Azerbaijan is planning to transform the Department for the Coordination of Special Confiscation Issues of the Prosecutor General Office into a full-fledged asset recovery office. An ongoing Twinning project, to be finished in 2024, is a part of this process. The Directorate publishes its semi-annual and annual activity reports, which contain a wide range of performance data.

Figure 8.1. Performance level for Specialized Anti-Corruption Institutions is average

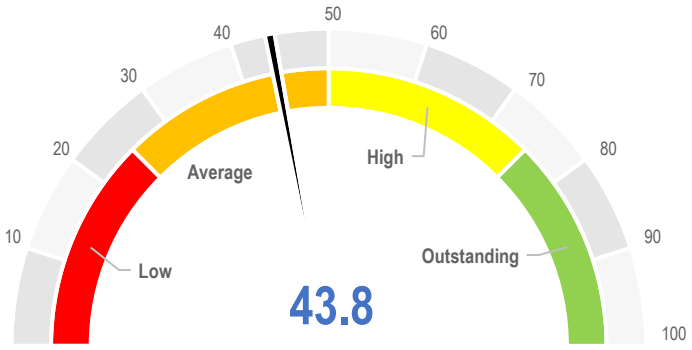
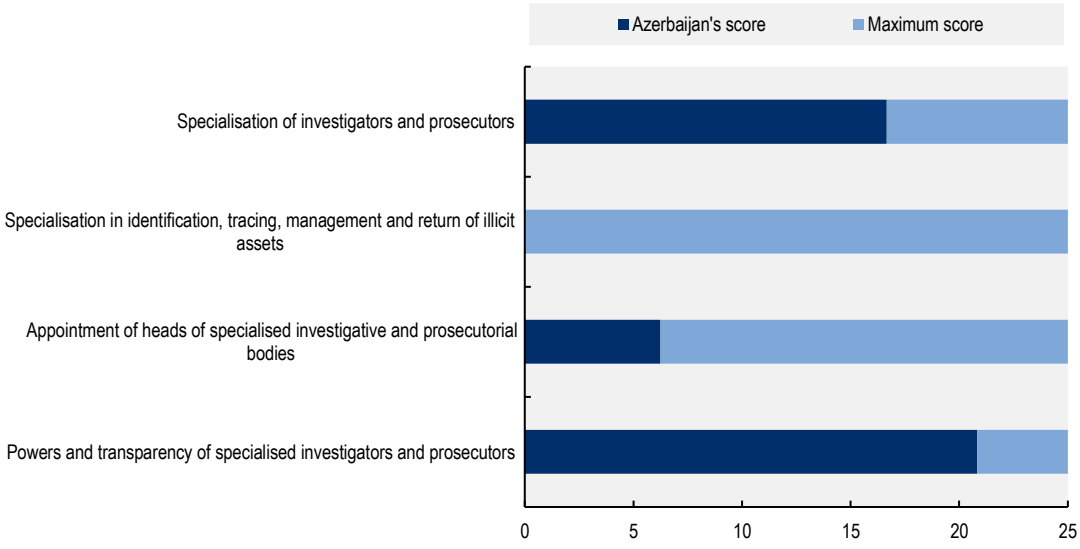


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators



Indicator 8.1. The anti-corruption specialisation of investigators and prosecutors is ensured

Assessment of compliance

Benchmark 8.1.1.

Investigation of corruption offences is assigned in the legislation to a body, unit or a group of investigators which specialise in combatting corruption:

Element	Compliance
A. There are investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (70%) OR	B (100%)
B. There is a body or unit of investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (100%)	

The Directorate is the specialized law enforcement anti-corruption body. Its mandate to investigate corruption offences is established by Article 11-1 of the Prosecutor's Office Act and further detailed in the Statute of the Directorate. Investigation of corruption is the main focus of the Directorate, though it also has a mandate to investigate offences inextricably linked with the corruption. According to the authorities, in 2022, the Directorate investigated offences other than corruption, mostly in cases where offences were inextricably linked to corruption.

Benchmark 8.1.2.

Jurisdiction of the anti-corruption body, unit, or a group of investigators specified in 1.1, is protected by legislation and observed in practice:

Element	Compliance
A. The legislation does not permit corruption cases to be removed from the specialised anti-corruption body, unit, investigator, or allows it only exceptionally, based on clear grounds established in the legislation	X
B. There were no cases of transfer of proceedings outside legally established grounds	✓

The CPC stipulates that investigations may be delegated to other investigative body by the decision of the Prosecutor General or his/her first deputy in exceptional cases on the following grounds laid down by Articles 215.7.1-215.7.5 of the CPC: (a) it is established that the offence was concealed by the investigating authority concerned (and the necessary measures were not taken by the head of the appropriate executive authority, including failure to remove the circumstances in question and to charge the accused); (b) it is established that during the investigation the defendant was detained or arrested unlawfully, or was tortured by the investigating authority concerned; (c) it is established that the accused was denied the right to counsel, as provided for in Article 92.3 of the CPC, by the investigating authority concerned; (d) the head of the relevant investigative authority or one of his close relatives is a victim, defendant, civil plaintiff or civil defendant in the investigation. These grounds are clear and leave little space for legal interpretation. However, additional grounds provided in Article 215.7.5 (when the nature of the crime, the nature of the case, and the interests of the preliminary investigation require it, which is in the interests of the state and society) allow extremely wide discretion in its application.

In addition, the Decree No. 387 of the President of the Republic of Azerbaijan "On the Application of the Criminal Procedure Code of the Republic of Azerbaijan" endows the State Security Service (SSS) with the competence to investigate a crime committed by an official, if it is revealed that a crime that seriously harms the foundations and security of the constitutional order of the state, national security interests and legally protected interests in the public and economic spheres has been committed by the official during his/her official duties. These grounds for establishing the institutional jurisdiction of the SSS over corruption investigations are vague and subject to broad legal interpretation. Thus, the country is not compliant under element A.

Element B is compliant. According to the authorities, in 2022, there were no cases of the transfer of corruption investigations from the Directorate to any other investigative body or unit.

Benchmark 8.1.3.

Prosecution of corruption offences is conducted by a body, unit or a group of prosecutors which specialise in combatting corruption:

Element	Compliance
A. There is a body, unit, or a group of prosecutors with a clearly established mandate to supervise or lead the investigation of corruption cases as the main focus of activity	✓
B. There is a body, unit, or a group of prosecutors with a clearly established mandate to present corruption cases in court as the main focus of activity	x

Azerbaijan is compliant under element A. Pursuant to Article 11-1 of the Prosecutor's Office Act, the Directorate, as a specialised prosecution body, supervises and leads investigations of corruption at the pre-trial stage, and files completed investigations with the courts for adjudication as the main focus of its activities.

Supervision of corruption investigations led by the Directorate is carried out by its director, who is ex officio the deputy Prosecutor General. When the head of the Directorate exercises prosecution on corruption offences, he/she fully enjoys all the powers applicable to prosecutors, as envisaged by Article 84 of the CPC.

Element B is not compliant. The specialisation of prosecutors to present corruption criminal cases in courts as the main focus of their activity did not exist in Azerbaijan in 2022. The prosecutors from the Public Prosecution Department of the Prosecutor General Office and its territorial divisions were presenting all types of criminal cases in the courts of all instances. No group of prosecutors within this Department was assigned to and specialised in presenting corruption cases in court as the main focus of their activity.

Indicator 8.2. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Assessment of compliance

Benchmark 8.2.1.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including from corruption (asset recovery practitioners), functions in practice	X

The Special Confiscation Coordination Department, subordinate to the Prosecutor General, was established in 2020 in Azerbaijan to improve the efficiency of the asset recovery practice. The responsibility to identify, trace and organise return of corruption proceeds (the asset recovery function) remains the function of investigators. Investigators can send the respective asset recovery requests via the Department. Nevertheless, they can still do it directly. The mandate of the Department is to provide coordination and support to investigators. Thus, Azerbaijan currently has no dedicated bodies, units, or groups of specialised practitioners dealing with the identification, tracing and return of corruption proceeds. The Department cannot be considered a “dedicated unit” as required by the benchmark with a clearly established mandate and responsibility to identify, trace and organise return of corruption proceeds in Azerbaijan.

Benchmark 8.2.2.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the management of seized and confiscated assets in criminal cases, including corruption, functions in practice	X

Pursuant to the “Rules of Activity of the Prosecutor's Office”, The Special Confiscation Coordination Department carries out some functions in respect of the management of seized assets. However, the benchmark requires that a dedicated body, unit, or group of specialists deal with the management of seized and confiscated assets in criminal cases as the main focus of their activity and not perform other duties. According to the “Rules on Activity of the Prosecutor's Office”, the Special Confiscation Coordination Department has some functions and responsibilities with respect to the management of seized and confiscated assets. However, the Special Confiscation Coordination Department does not qualify as a dedicated unit, nor does it have a group of specialized officials that deal exclusively with this function, for the following reasons: according to the authorities, after a court decision to confiscate movable and immovable property, it is then under the management of the state, which is the responsibility of bailiffs. The authorities did not provide the monitoring team with any evidence that, in 2022, there was a specialised body with the main focus of its activity being the management of seized and confiscated criminal assets functioned in practice.

The monitoring team commends Azerbaijan for an ongoing Twinning project that envisages attributing functions of managing seized and confiscated criminal assets to the Special Confiscation Coordination Department. On the other hand, the goal of the project supports the conclusion of the monitoring team that the Department did not have the function of managing seized and confiscated criminal assets in 2022.

Indicator 8.3. The appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based, with their tenure in office protected by law

Assessment of compliance

Benchmark 8.3.1.

The head of the anti-corruption investigative body, unit, or group of investigators, which specialises in investigating corruption, is selected through the following selection procedure in practice:

Element	Compliance
A. The legislation regulates the main steps in the process	N/A
B. The information about the outcomes of the main steps is published online	N/A
C. The vacancy is advertised online	N/A
D. The requirement to advertise the vacancy online is stipulated in the legislation	N/A
E. Any eligible candidates could apply	N/A
F. The selection is based on an assessment of candidates' merits (experience, skills, integrity) in legislation and in practice	N/A

The current head of the Directorate was appointed by the order of the President of the Republic of Azerbaijan in 2020; therefore, the benchmark is not applicable. However, the monitoring team provides the analysis below for the possible improvements to the current selection procedure.

Article 131 of the Constitution of the Republic of Azerbaijan provides for the appointment of the deputies of the Prosecutor General (the head of the Directorate is ex officio one of them) by the President of the Republic of Azerbaijan based on the motion of the Prosecutor General. The legislation does not provide for online advertising of the vacancy. According to authorities, criteria for the promotion of prosecutors established by the Law "On Service in the Prosecutor's Office" (Article 11) are applied for the appointment of the head of the Directorate. The law is silent on procedures for the application of the criteria. In addition, the criteria of "professionalism, results of labour, moral qualities" are too vague to be considered "clear criteria" since they allow for wide discretion in their interpretation. The main steps in the process of selection and appointment of the head of the Directorate are not regulated by legislation. Publication of information on the different steps of the process of selection and appointment to inform the public is not foreseen. The vacancy for the head of the Directorate is neither published online nor available to the public. A person from outside cannot apply for this position. Competition of the inside candidates of the Office of Prosecutor is not applicable for the selection of the head of the Directorate. The head of the Directorate is appointed without competition.

Benchmark 8.3.2.

The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators, which specialise in investigating corruption, is clear, transparent, and objective:

Element		Compliance
A.	Grounds for dismissal are defined in the law	✓
B.	Grounds for dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “loss of confidence or trust” unless the legislation breaks them down into more specific grounds	X
C.	The law regulates the main steps of the procedure	X
D.	The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online	X

Element A is compliant. General grounds for termination of service in the prosecutor's office established by the Law “On Service in the Prosecutor's Office” (Article 29) and the Prosecutor’s Office Act (Article 34) are applicable to the dismissal procedure of the Head of the Directorate. Pursuant to Article 133 of the Constitution, the director of the Directorate (at the same time he/she is the deputy Prosecutor General) is dismissed by the President of the Republic of Azerbaijan based on a motion of the Prosecutor General. The authorities noted that grounds for dismissal for “inaptitude for the post, as decided by the Attestation Commission” are not applicable to the Head of the Directorate based on the exclusion provided in Article 304 of the “Rules on Activity of the Prosecutor's Office”. It provides that all prosecutors, except those holding designated posts, including deputy Prosecutor General, undergo attestation once every five years. This provision excludes the Head of the Directorate from undergoing an attestation procedure, and theoretically receiving an “inaptitude for the post” evaluation.

Element B is not compliant. Grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow the unlimited discretion of the decision-making body. The law should expressly state all the actions or inaction that can result in dismissal. The grounds should be formulated narrowly and unambiguously, avoiding such general formulations as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust.” If such grounds are used, the legislation should break them down into more specific grounds.

From the grounds for dismissal as provided by the law, at least three are problematic: 1) violation of service discipline and improper performance of duties; 2) gross or regular infringements of service or labour discipline 3) being engaged in action incompatible with the prosecutor's position. These grounds are not specific enough and allow for discretionary legal interpretation, for example, what kind of infringements of service discipline can be considered “gross infringement” or “improper performance of duties”, or what action or inaction may constitute an action incompatible with the prosecutor's position. Specifically, Article 34 of the Prosecutor's Office Act provides for the following grounds for dismissal: being engaged in activity incompatible with the prosecutor's position, being an investigator or detective of the prosecutor’s office, or taking actions incompatible with the prosecutor's position. While Article 30 of the Prosecutor's Office Act further breaks down into more specific details the concept of “activity incompatible with the prosecutor's office”, the concept of “actions incompatible with the prosecutor's position” is not further detailed in the law. In addition, although “Rules on the Activity of the Prosecutor's Office” include more details on the elements of the service discipline and labour discipline, neither law, nor Rules further explain what kind of breaches of service or labour discipline might actually lead to dismissal, or what are the characteristics of gross infringement and action incompatible with the prosecutor's position. The authorities clarified that “gross” relates to the level of severity of an offence, but this explanation also leaves a wide margin of obscurity.

Element C is not compliant. Article 133 of the Constitution of the Republic of Azerbaijan and other pieces of legislation explicitly establish just two steps in the procedure for dismissal of the Head of the Anti-Corruption Directorate: 1) a motion of the Prosecutor General to the President of Azerbaijan; and 2) approval or rejection of the motion by the President. The law is silent on many substantial steps in this procedure, like who can initiate the dismissal procedure, who should establish the facts confirming the ground(s) for dismissal, how an inquiry on allegations should be conducted, etc.

Element D is not compliant. According to Article 149 of the Constitution of the Republic of Azerbaijan, normative legal acts (including decrees and orders of the President) shall be published. However, there is no requirement in the primary laws of the country to publish any information related to the motion of the Prosecutor General to the President as a separate step of the dismissal procedure.

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	N/A

There was no dismissal of the Head of the Directorate in 2022.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

Element		Compliance
A.	The legislation regulates the main steps in the process	N/A
B.	The information about the outcomes of the main steps is published online	N/A
C.	The vacancy is advertised online	N/A
D.	The requirement to advertise the vacancy online is stipulated in the legislation	N/A
E.	Any eligible candidates could apply	N/A
F.	The selection is based on the assessment of candidates' merits (experience, skills, integrity)	N/A

The current head of the Directorate was appointed by the order of the President of the Republic of Azerbaijan in 2020; therefore, the benchmark is not applicable. However, the monitoring team provides an outline of the selection procedure, as stipulated by the legislation, below.

The legislation provides for just two steps of the selection procedure for appointing the Head of the Directorate. Article 133 of the Constitution stipulates that the Head of the Directorate is appointed by the President based on the motion of the Prosecutor General. A reference to the same provision of the Constitution is provided in Article 11-1 of the Prosecutor's Office Act as well. The legislation is silent on the procedures applied for the selection of a candidate to be included in the motion of the Prosecutor General to the President of the Republic of Azerbaijan. There is no requirement in the legislation to advertise vacancies for the Head of the Directorate online. In practice, it has not been advertised either. There is no procedure for any eligible candidate to apply. Instead, the selection is conducted by the Prosecutor General. Criteria used for the appointment of the Head of the Directorate are envisaged by the law "On Service in the Prosecutor's Office". According to Article 11 of the Law, consideration is given to a candidate's professional level, results of work, and moral qualities. The monitoring team could not verify

that these merits are being considered in practice. The Head of the Directorate is appointed by the order of the President of the Republic of Azerbaijan, which is published according to Article 113 of the Constitution.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Assessment of compliance

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

Pursuant to Article 5 of the Law on Operational - Search Activities, operational activities on corruption-related offences are carried out only by a unit of the Prosecutor's Office specialised in the fight against corruption, which is the Directorate. Its powers and duties are envisaged by Article 11-1 of the Prosecutor's Office Act of the Republic of Azerbaijan, which includes conducting preliminary investigations and operational-search activity on corruption crimes. The list of operational-search activities available to the Operational Department is set out in Article 10 of the law “On Operational-Search Activities”. Covert surveillance, interception of communications, and undercover investigations are included. Application of wiretapping and intercepting communications is subject to the prior authorization of the court. In the exceptional cases set by the law, these measures can be implemented without the prior authorization of the court, but a reasoned decision substantiating the implementation of the operational measure should be submitted to a court that has the supervisory authority and the prosecutor in charge of procedural management of the pre-trial investigation.

Thus, the Directorate has the powers to apply covert surveillance and conduct undercover investigations through its own Operational Department, and to technically conduct interception of communications and wiretapping through (with the help of) the SSS. The country provided the examples of performing these functions by the Directorate (directly or through SSS) in practice. The interception of conversations conducted on the telephone or other means of communication, and of information sent over communication media, and other technical means can also be carried out as an investigative measure with the prior authorization of the court. Thus, the specialised anti-corruption investigative body, the Directorate, has the powers to apply covert surveillance and conduct undercover investigations through its own Operational Department, and to technically conduct interception of communications and wiretapping through (with the help of) the SSS. The authorities provided the examples of carrying out these measures by the Directorate in practice.

The Directorate indicated that it would be more effective in investigating corruption if it had its own technical capacity for intercepting telephone communications, which is currently being technically carried out by the State Security Service.

As concerns element B, investigators of the Investigation Department of the Directorate have access to tax, customs, and bank data in accordance with the CPC. A court order is required to access information

about financial transactions, bank accounts or tax payments (CPC, Article 177.3.6). Customs information for the purposes of investigation can be obtained by conducting a seizure that requires prior judicial authorization (CPC, Article 245). The Government provided practical examples of accessing tax, customs, and bank data for investigation purposes. The Directorate pointed out the need to strengthen methods of faster access to banking information.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	x
C. A number of terminated investigations with grounds for termination	✓

The Directorate prepares semi-annual and annual reports on its activities. In 2022, the Directorate published on its official website the annual report for 2021[16], and the semi-annual report for 2022[17]. Both reports contain information, statistics, and other pertinent data on its activities and investigations. Reports include comparisons in statistics with previous years and dynamics in the number of cases, statistical information on the Directorate's activities in various fields of its competence, analyses, and suggestions for improving the effectiveness of its activities. In addition, the report contains the statistics on complaints received from citizens, criminal investigations opened, cases filed with courts, and terminated cases.

Azerbaijan complies with element A. A number of criminal investigations opened on corruption offences by the Directorate were published twice in 2022: in the yearly activity report of 2021 that was published early in 2022, and in the semi-yearly report of 2022.

Element B is not compliant. The yearly activity report of 2021 and the semi-yearly report of 2022 included statistics about cases and defendants that were filed with courts for adjudication. The number of persons was further broken down by the area of activity in which the defendants were employed when offence was committed. However, information is not disaggregated by level and types of officials as required under the benchmark.

As concerns element C, a number of terminated investigations with grounds for termination were published twice in 2022, specifically in the yearly activity report for 2021, and in the semi-annual report for 2022. According to the semi-annual report, in the first half of 2022, 16 criminal investigations were terminated. Out of these, 4 cases were terminated due to the absence of an element of offence; 2 cases were terminated due to the expiration of the limitations period; and 10 cases were terminated on the grounds provided by Articles 40.2-40.3 of the CPC (which in turn refer to grounds for termination outlined in Articles 72 to 74 of the CC, such as sincere regret; for crimes against property, the possibility of termination when material damage has been compensated, part of it paid to the state budget, and the victim has no complaints; change of circumstances, etc.). Thus, element C is compliant.

[16] https://genprosecutor.gov.az/az/redirect/1565

[17] https://genprosecutor.gov.az/az/redirect/1588

Box 8.1. Good practice – taking steps to establish the Asset Recovery Office

Compensation of damages caused to institutions and citizens as a result of committed corruption crimes is one of the main priorities in the activity of the Directorate. To specify, over 52 million manats (almost 70% of the total material damage inflicted on another's property and filed in investigations commenced in 2022) have been paid to the Directorate in 2022. In addition, in 2022, the inflicted damage of over 44 million manats was recovered in cases that were terminated in 2022.

Azerbaijan is taking steps to establish a fully-fledged Asset Recovery Office. The ongoing Twinning project envisages the inclusion of property management functions in the powers of the Department for the Coordination of Special Confiscation Issues, which will be further transformed into an asset recovery office.

Current legislation does not allow the sale of perishable assets, that require immediate management or involve high management costs, until a final court decision. Azerbaijan is in the process of amending the CPC to resolve this flaw.

9 Enforcement of Corruption Offences

Criminal liability for corruption is enforced in Azerbaijan, but more efforts should be focused on targeting high-level public officials. The offence of illicit enrichment has not been criminalised, and there are no procedures for the confiscation of unexplained wealth through administrative or civil proceedings. The authorities were not sufficiently effective in enforcing money laundering with public sector corruption as a predicate offence, and as an autonomous offence. Some provisions for special exemption from active bribery are prone to abuse. No corruption investigation was terminated due to the expiration of the limitation period. While corporate criminal liability was established, its implementation for corruption offences was very limited. There were no provisions for fully autonomous corporate criminal liability of legal entities, and there was no routine practice of application of the monetary sanctions (measures) and confiscation of corruption proceeds to legal persons in 2022. Azerbaijan should enhance the implementation of the confiscation of instrumentalities of corruption. Provisions on launching formal investigations, based on media publications, raise serious concerns. A legal requirement for the media to submit documents supporting published corruption allegations might be a significant impediment to detecting corruption and undermine the role of the media in this respect. Corruption allegations published in the foreign media were not investigated due to national legislation regulating the grounds for opening an investigation

Figure 9.1. Performance level for Enforcement of Corruption Offences is average

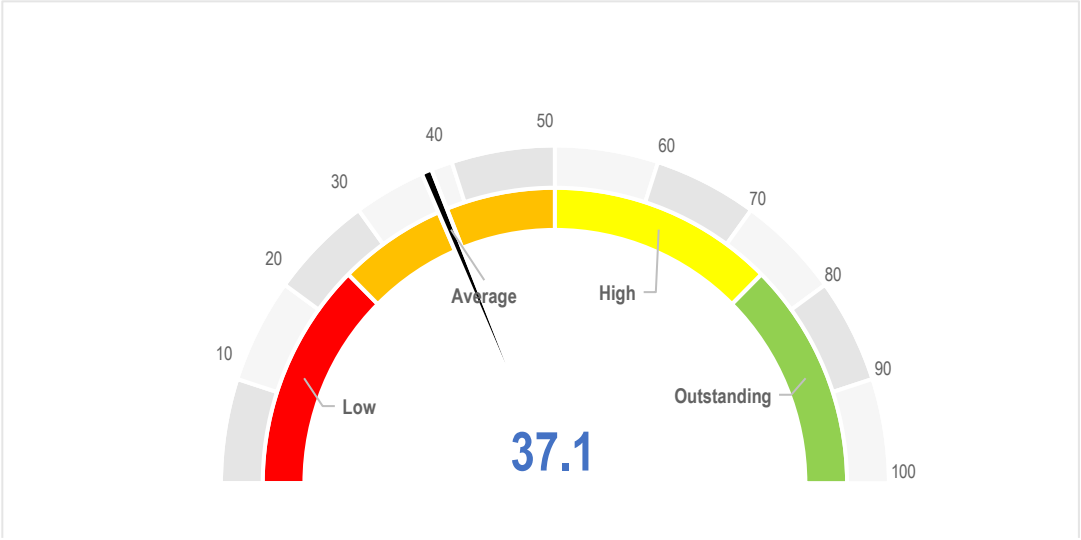
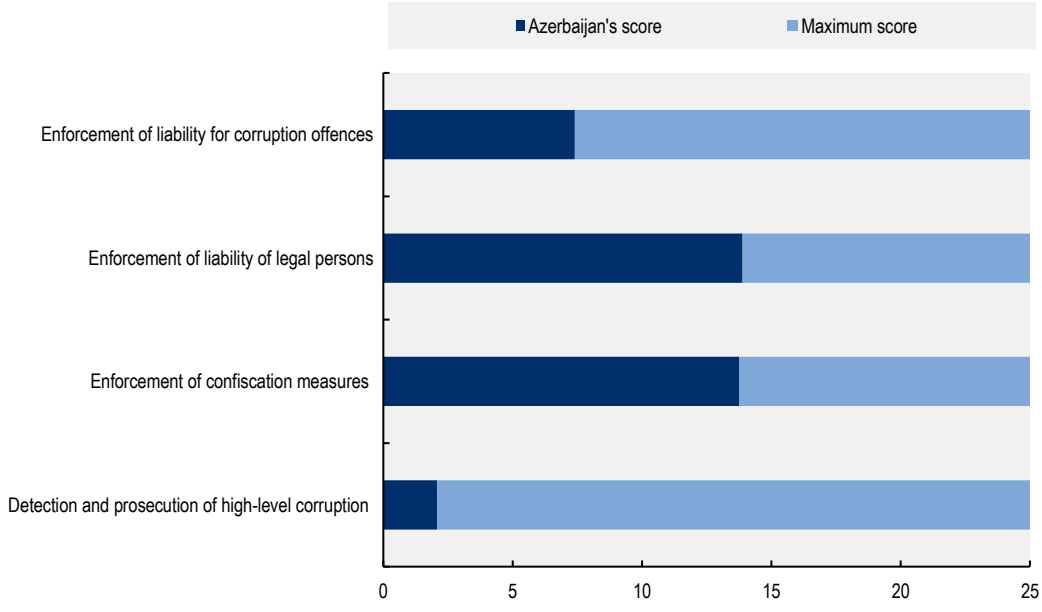


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators



Indicator 9.1. Liability for corruption offences is enforced

Background

This indicator tracks the enforcement of corruption offences through criminal sanctions. In most cases, its benchmarks require that sanctions for offences be "routinely imposed," meaning that the national authorities must provide at least three examples of specific cases of the first instance convictions delivered in 2022 for the respective offences.

Assessment of compliance

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	X
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	X

To show compliance with this and other benchmarks requiring the routine application of sanctions, the authorities must provide at least three examples of sanctions (convictions) applied by the first instance courts in 2022 for each element of the benchmark. Authorities provided examples of three cases to meet the requirements of elements A (active bribery in the public sector) and B (passive bribery in the public sector). The number of convictions under elements C (active or passive bribery in the private sector) and F (trading in influence) did not reach the threshold of three cases under each of them. Authorities provided only two valid cases of convictions for bribery in the private sector.

The criminal law in Azerbaijan does not distinguish between public sector and commercial bribery. Bribery in the public and private sectors is sanctioned under Article 311 (passive bribery) and Article 312 (active bribery) of the CC. Offering, promising and giving a bribe, bribe solicitation, acceptance of an offer/promise and receipt of a bribe, as well as "illegal influence over the decision-making of an official (trading in influence)" are criminalised in Azerbaijan (articles 311, 312, and 312-1 of the CC).

Table 9.1. Statistics on the total number of convictions in 2022

Number of persons convicted for:	Year
Active bribery in the public sector	62
Passive bribery in the public sector	37
Active bribery in the private sector	0
Passive bribery in the private sector	2
Offering or promising of a bribe as a stand-alone offence	0
Bribe solicitation or acceptance of an offer/promise of a bribe as a stand-alone offence	0
Bribery with an intangible and non-pecuniary undue advantage	0
Trading in influence	2

Source: Provided by Azerbaijani authorities.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	X

The offence of illicit enrichment is not criminalised under national legislation. The legislation also does not provide for the confiscation of unexplained wealth through administrative or civil proceedings. However, the Government noted that draft legislation against illicit enrichment has been prepared as part of the implementation of the National Action Plan 2022–2026 and has been sent to relevant governmental bodies for their feedback.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

In 2022, no foreign bribery investigation was opened or conducted by the Investigation Department of the Directorate or any other national investigation agency.

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	X
B. Money laundering sanctioned independently of the predicate offence	X

Authorities provided two examples of convictions for money laundering with a predicate offence of public sector corruption. In one case, a public official was convicted of laundering proceeds from passive bribery. In another case, a public official was sentenced for laundering proceeds from misappropriation and abuse of power. These examples demonstrate the commitment of authorities to prosecute money laundering with possible public sector corruption as a predicate offence. However, they do not reach the required number of three convictions under the benchmark.

With respect to element B, the authorities provided two cases in which three individuals were convicted for money laundering only; nevertheless, these convictions appear to be third-party money laundering where individuals were found guilty of laundering proceeds from identified predicate offences.

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	✓

The Government referred to the CC that includes the "deprivation of the right to occupy certain positions or to be engaged in certain activities" as an autonomous sanction or as a mandatory punishment when a public official is sentenced to imprisonment. Deprivation of the right to occupy certain positions or to be engaged in certain activities may be applied only if provided as an available sanction under a specific criminal offence. However, it is not provided for all corruption offences and when it is provided, in some cases, it is an optional or alternative punishment that is at the discretion of the court to impose. The court may impose it as an auxiliary sanction in cases where it is not provided under a specific offence. To sum it up, the CC leaves some gaps for public officials sentenced for a corruption offence to escape dismissal from a public office under certain preconditions. From the many examples of convictions for corruption crimes provided by the government, it can be concluded that in practice, the courts apply as a sanction the deprivation of the right to occupy senior and materially responsible positions in state and municipal bodies (meaning that not all public positions are covered by the mentioned prohibition). However, the authorities assured that in practice, convicted public officials are always dismissed from public service, and there were no exceptions in 2022.

In addition, the Government referred to the Civil Service Law (Article 37.1.10) as stipulating that the civil servant should be dismissed if a conviction becomes effective. Other sectorial laws on public service (for instance, on judges, prosecutors, and the police) also provide for the mandatory termination of office in case of conviction.

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

	Element	Compliance
A.	Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	X
B.	The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	X
C.	The special exemption is not allowed when bribery is initiated by the bribe-giver	X
D.	The special exemption requires active co-operation with the investigation or prosecution	X
E.	The special exemption is not possible for bribery of foreign public officials	X
F.	The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	X

Pursuant to Article 312 of the CC, a person who gave a bribe to an official should be exempted from liability in the existence of the following circumstances: 1) the bribe was given as a result of intimidation by an official; 2) a person has voluntarily reported the bribe to the relevant state authority. The Government claimed that voluntary reporting could be a ground for exemption from liability only if the following

preconditions were met: a) a bribe-giver reports the offence on his/her own initiative before it is detected by the law-enforcement bodies, or b) a bribe-giver reports the offence on his/her own initiative after the law-enforcement bodies have become aware of alleged bribery from other sources under the condition that the reporting person was not aware of this fact. There is no requirement in the legislation that a special exemption be valid only for a short period of time after the commission of an offence. There is no clear prohibition in the law against applying a special exemption to bribe-givers who initiated the bribery. The provisions of the CC likewise do not exclude foreign bribery offenses from the application of a special exemption.

With respect to element D, the authorities explained that voluntary reporting is a broad concept and encompasses not only notifying state authorities about the offence but also active cooperation with them for the purposes of detection of all participants in the offence, tracing direct proceeds and derivatives of the offence, as well as means and tools used for the commission of the crime. The authorities referred to the decision of the Constitutional Court[18] that provided a legal interpretation of the concept of voluntary confession / reporting. According to the Decision, "voluntary confession means that the guilty person, without coercion, voluntarily presents himself to the criminal prosecution authorities or other state authorities and provides honest information about the committed or prepared crime or his participation in that crime. Also, actively helping to solve the crime is expressed in the fact that the person gives a correct statement during the investigation about all the circumstances known to him in connection with the committed crime, in finding the participants of the crime, in finding the objects or tools and means obtained by the crime, and in helping the investigative bodies discover the traces of the crime. In the opinion of the monitoring team, the decision of the Constitutional Court is irrelevant as a specific ground for release from criminal liability under article 312 of the CC. The decision of the Constitutional Court interprets articles 59 and 60 of the CC as an instrument of the general part of the CC designed for softening the punishment, not for release from responsibility. Therefore, the Decision of the Constitutional Court cannot be applied to interpret the Note to Article 312, which is a provision of the Special Part of the CC.

With respect to element F, Article 40.3 of the CPC stipulates that when the circumstances provided for in the relevant articles of the Special Part (like Note of article 312) of the CC are established for the release of a person from criminal liability, criminal prosecution shall not be initiated or terminated based on the decision of the investigator agreed with the prosecutor. It follows that a special exemption is neither applied by the court nor is there the judicial control over its application by the prosecutor. The Government explained that there are some elements of judicial oversight provided by the CPC. Specifically, within the procedures of the judicial oversight based on Article 449.3.5 of the CPC, the court can review the termination of the case upon receipt of the complaint. In addition, the court has the right to dismiss the case on these grounds based on Article 43.1.2 of the CPC at the trial stage.

[18] Decision of the Constitutional Court of the Republic of Azerbaijan "On the interpretation of some provisions of Articles 59.1.9 and 60 of the Criminal Code of the Republic of Azerbaijan," dated 2 April 2012.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	✓
B. The expiration of time limits for investigation or prosecution	✓

There were no cases of corruption offence by a public official terminated due to the expiration of the limitations period or because of the expiration of time limits for investigation or prosecution. In 2022, there were two investigations terminated by the Directorate because of the expiration of the imitation period, though neither of them concerned corruption by a public official.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	X
D. Types of punishments applied	X
E. Confiscation measures applied	X
F. Types and levels of officials sanctioned	X

During 2022, the Directorate published its yearly activity report of 2021 and its semi-annual report of 2022. The reports were published on the official website of the Prosecutor's Office. Both reports contained data on the number of cases opened and cases sent to the court, disaggregated by the type of corruption offence. Reports include overall statistics on the number of cases ending with a sentence, and number of convicted persons, types of punishment applied, area of employment of officials sanctioned, confiscation measures applied, but they are not disaggregated by the type of corruption offence as required under the benchmark.

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	X

The Government stated that enforcement statistics on corruption offences were collected and published by the Directorate. The Directorate collected and provided to the monitoring team relevant statistics, but there were data gaps. According to the Monitoring Guide, the enforcement statistics collected at the central level should at least include the data mentioned in elements A–F of the benchmark 1.8. The enforcement statistics, collected in 2022, included general data on the number of cases ending with a sentence, and number of convicted persons, types of punishment applied, area of employment of officials sanctioned,

confiscation measures applied, though it was not disaggregated by the type of corruption offence as required under the benchmark. In addition, the monitoring team notes that neither any law, nor sub-law lays down the responsibility of the Directorate to collect corruption enforcement statistics at the centralized level.

Some corruption enforcement statistics (investigations opened, cases sent to courts, number of accused and convicted persons, etc.) were collected by the Operational and Statistical Information Directorate of the Ministry of Internal Affairs, but they were not published.

The monitoring team concluded that, in 2022, corruption enforcement statistics collectively for all law enforcement agencies mandated to investigate corruption were not collected on the central level.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Background

Articles 99-4 to 99-10 of the CC provide the legal framework for corporate criminal liability. A legal entity may be subject to liability if an offence is committed "in the favour" of the legal entity or "to protect its interests" by an official authorized to represent the legal entity, to make decisions on its behalf, or to supervise its activities, or by an employee of the legal entity as a result of non-control by those officials.

Assessment of compliance

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	✓

Article 99-4.6. of the CC sets the following exhaustive list of corruption crimes entailing liability for legal entities: abuse of power (Article 308); passive bribery (Article 311); active bribery (Article 312); exerting illegal influence on the decisions of officials (Article 312-1). Corporate liability does not cover embezzlement, misappropriation, or other diversion of property by a public official, but it has no effect on compliance evaluation under the benchmark. Still, it is recommended to close this gap in the corporate criminal liability framework to ensure a more comprehensive response to corporate entities engaged in corruption.

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

Legislation does not provide for autonomous corporate criminal liability. Criminal proceedings against a legal entity cannot be opened without prior identification of an alleged perpetrator, and proceedings against a legal entity are commenced by adopting a written decision within the investigation against a natural person (CPC, Article 487-2.1).

Even though the CC provides that "termination of criminal prosecution in respect of the physical person shall not prevent application of the criminal law measure to the legal person", corporate liability is not fully independent (Article 99-4.3). According to Article 487-2.2 of the CPC, proceedings on the application of criminal measures against a legal entity and the investigation of a criminal case under articles 99-4.1.1–99-4.1.4 of the CC in which a natural person is recognized as a suspect or accused shall be conducted in one proceeding (except as provided in Article 487-6.6 of this Code). Thus, the law does not provide for separate proceedings. If a person is not found to be a suspect or defendant, there are no procedural rules for separate criminal proceedings against a legal entity. If a specific natural person (the perpetrator) is not found, there is no possibility of initiating corporate liability proceedings against a legal entity.

The grounds for instituting separate proceedings (Article 487-6.6 of the CPC) that Azerbaijan referred to are very limited: (1) If the person dies after committing the act provided for in criminal law; (2) If the person committed the offence unconsciously (excluding circumstances requiring the application of coercive measures of a medical nature to such persons); (3) If there are grounds under the provisions of criminal law to absolve the suspect of criminal responsibility; (4) If the person has to be released under an amnesty act.

A criminal case may not be commenced or may be discontinued if the person is absolved of criminal responsibility by the decision of the preliminary investigator and investigator, with the agreement of the prosecutor, in the following circumstances covered by Articles 72–75 of the CC of the Azerbaijan Republic: (1) Where the person evinces sincere remorse; (2) Where the person is reconciled with the victim; (3) In the event of a change of circumstances; (4) If the statute of limitations expires.

Criminal sanctions cannot be imposed on a legal entity if an officer of the entity who committed a crime for the benefit of the entity or in its interests is discharged from liability due to the expiration of the statute of limitations (Article 99-9 of the CC).

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	✓

Pursuant to Article 99-5 of the CC, the following sanctions are available for legal persons: fine; confiscation; deprivation of the legal person's right to be engaged in certain activities; liquidation (abolition) of the legal person.

The amount of the fine applicable to legal entities may vary from AZN 50,000 up to AZN 200,000 (approximately EUR 27,000 up to EUR 108,000[19]) or between onefold and fivefold of the damage caused or earned income.

According to the CC, fines are determined by considering the economic and financial situation of a legal entity. The penalty applied to a legal entity cannot exceed the half of the value of the legal person's property (Article 99-6.4).

The maximum fine of AZN 200,000 raises concerns regarding its dissuasiveness and proportionality. High-level corruption may inflict damages and/or produce illegal profits of much bigger value, and imposing an

[19] Exchange rate as of July 2023

equivalent or manyfold fine may sometimes be the only available tool to recover damages inflicted or to take away profits from criminal activity.

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	✓

According to Article 99-5 of the CC, the following non-monetary sanctions can be imposed on legal entities: liquidation of the legal entity, and deprivation of the right to engage in certain activities. The latter includes a cancellation of the special permit (license) to engage in certain types of business, as well as a prohibition of the conclusion of certain agreements, issuing of shares or other securities, receipt of state subsidies, or other benefits, or engagement in other activities (Article 99-7 of the CC). The list of activities mentioned in the Article 99-7 of the CC is not exhaustive, and other prohibitions may be imposed as well.

Benchmark 9.2.5.

	Compliance
The legislation or official guidelines allow due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions considering the case circumstances	X

The CC is silent on any opportunities for due diligence defence. No other piece of legislation or set of guidelines addresses this point. The authorities noted that Azerbaijan has a system (mechanism) in place through which a legal person may prove that necessary compliance measures have been taken to deter the offence, and so seek termination of the investigation, mitigation of sanctions imposed, or acquittal. The Government referred to provisions of the CC stipulating circumstances to be considered on application of sanctions against legal entities (Articles 59.2 and 99-5.4), but they do not explicitly refer to the due diligence defence. Article 59.2 of the CC stipulates that the list of mitigating circumstances provided by the CC is non-exhaustive, and a due diligence defence could be considered a mitigating circumstance. Such statements should still be tested in practice.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	✓

In 2022, there were no cases of monetary sanctions or confiscation of corruption proceeds applied to legal persons for corruption offences. Non-monetary sanction (liquidation) was applied to 21 legal persons in a single corruption case that is sufficient to meet the threshold under this benchmark.

Indicator 9.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Authorities provided evidence of the routine application of confiscation of corruption proceeds, including indirect proceeds and mixed proceeds. Authorities did not provide evidence of the confiscation of instrumentalities of corruption.

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	X
B. Proceeds of corruption offences	✓

The authorities referred to one case where two people were sentenced on charges of running an illegal currency exchange office and abuse of official powers. By the court's verdict, items used to maintain the operation of the exchange office (for example, a banknote counting device, and video recording cameras) were confiscated as tools of the commission of the offence. On the face of it, the confiscated articles were instrumentalities to the offence of running illegal business and not to the corruption offence of abuse of official power; therefore, they do not satisfy requirements under the benchmark. Nevertheless, the presented case law is a demonstration that authorities have the necessary legal tools for implementing confiscation of instrumentalities of crime, including corruption.

The authorities stated that there were 22 cases in which the proceeds of corruption offences were confiscated by court decisions in 2022. The authorities provided an outline of three cases where proceeds of corruption (abuse of power, misappropriation) were confiscated by the court's decision.

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	✓

The authorities stated that 12 out of a total of 22 confiscation orders in corruption cases were executed fully (every one of the 12 cases was executed 100%) in 2022.

Benchmark 9.3.3.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Confiscation of derivative (indirect) proceeds of corruption	X
B. Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	✓
C. Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	✓
D. Confiscation of mixed proceeds of corruption offences and profits therefrom	✓

Number of cases where confiscation of derivative (indirect) proceeds of corruption was applied – 0,

Number of cases where confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties was applied – 3,

Number of cases where confiscation of property, the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation), was applied – 1,

Number of cases where confiscation of mixed proceeds of corruption offences and profits therefrom was applied -1.

Benchmark 9.3.4.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences	X
B. Extended confiscation in criminal cases	X

The legislation does not provide for non-conviction based confiscation. The authorities noted that although non-conviction based confiscation of instrumentalities and proceeds of corruption offences is not present in national legislation, there are some elements of it. According to Article 41.1-1 of the CPC, in cases where the criminal prosecution should be terminated without exculpatory grounds, but the grounds for the application of special confiscation are determined according to the provisions of the Code, the criminal prosecution proceedings shall be continued in the manner established by the Code, and it is completed by adopting the final decision of the court. The authorities presented an example where court proceedings in a private corruption case continued after the defendant had died with a view to securing the confiscation of arrested assets. This example does not qualify as non-conviction based confiscation, since the court had to decide on the guilt of the deceased defendant before delivering a confiscation order.

Extended confiscation is not available in Azerbaijan.

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	✓

In 2022, there were no cases of the return of corruption proceeds from abroad.

According to the authorities, 17 requests to confiscate corruption proceeds were sent abroad in 2022. Authorities referred to three cases where requests for confiscation of proceeds from offences of abuse of power and misappropriation in aggravated circumstances were sent to two European Union countries. These 3 requests were sent in 2 criminal cases, both related to officials of one SOE who were convicted of corruption (abuse of power, misappropriation, money laundering, etc.). Requests were ongoing as of the end of 2022.

Indicator 9.4. High-level corruption is actively detected and prosecuted

Background

"High-level corruption" in this monitoring means corruption offences which meet one of the following criteria: A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories). B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to). A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly statutory minimum wages (or the equivalent of the minimum wage if it is not applicable) fixed in the respective country on 1 January of the year for which data is provided. The methodology also provides a definition of "high-level officials."

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

The authorities referred to four cases of convictions of heads of municipal executive bodies for corruption offences. All four defendants were sentenced to imprisonment ranging from 6 and a half years up to 12 years without conditional or another type of release.

However, it cannot be considered compliant as the country did not provide the following statistics and assurance required by the benchmark: a) statistics of all convictions for aggravated bribery offences potentially punishable with imprisonment (under relevant articles of the CC) in 2022, by indicating the position of those convicted at the time of committing the offence and amount of unlawful benefit incriminated in each such case, b) further identifying among them "high-level corruption cases" based on the criteria of high-level corruption in the Monitoring Guide and from that list of "high-level corruption

cases"– indicating which punishment was actually imposed by relevant court verdicts (of first instance, and if it helps – also appeal instance), and c) calculating the proportion of verdicts with real imprisonment imposed by courts based on provided data.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	✓
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	X
D. Does not impede the investigation and prosecution of corruption offences in any other way	X

The Constitution of the Republic of Azerbaijan provides immunity from investigation and prosecution to the following public officials: the President of the Republic of Azerbaijan, Vice Presidents of the Republic of Azerbaijan, the Prime Minister of the Republic of Azerbaijan, members of parliament (Milli Majlis), judges of the Constitutional Court and general courts, and the Ombudsman. The authorities claim that immunities do not impede the effective investigation and prosecution of corruption.

The authorities indicated that in 2022, there was only one case where procedures of lifting immunity against prosecution were implemented. It concerned a former judge of a general court. On 20 July 2022, the Prosecutor General of the Republic of Azerbaijan submitted a motion on lifting immunity to the Judicial - Legal Council. According to Article 101 of the Law "On Courts and Judges", the General Prosecutor's motion on the consent to the continuation of the criminal prosecution against the judge is reviewed within 72 hours from the day of its receipt. The next day, on 21 July 2022, the Judicial - Legal Council approved the motion on lifting the immunity of the former judge. Terms and some details of the immunity lifting process for judges are set out in the law.

With respect to the Ombudsman, the law stipulates that the immunity may be terminated only by a decision of the parliament adopted by a majority of 83 votes. Article 6 of the Constitutional "Law of the Republic of Azerbaijan "On the Ombudsman" stipulates the procedures of lifting the criminal procedural immunity of the Ombudsman.

Regulations for lifting the immunity of the President and Vice Presidents of the Republic of Azerbaijan, the Prime Minister, and members of parliament do not establish clear criteria and a transparent procedure of immunity lifting. For instance, a resolution on the removal of the President from office shall be adopted within 2 months of the Constitutional Court's submission to the Parliament. If the resolution is not adopted within the said term, then the accusations against the President shall be considered to have been rejected. Rejection by the Parliament of accusations against the President is the equivalent of judicial power to acquit an individual on criminal charges brought against him/her. While court procedures are regulated in detail by the CPC, the law is silent on what grounds and on what considerations the Parliament may reject a motion to lift the President's immunity. Equivalent gaps are present in procedures with respect to other public officials protected by the immunity.

On the face of it, other procedural immunities (against arrest, detention, search, application of covert measures, etc.) impede or most likely may impede the effective investigation and prosecution of corruption allegedly committed by public officials protected with immunity. Open and secret investigative measures before lifting the immunity are allowed only in flagrante delicto and are limited to the immediate investigative actions. Following that, an immediate lifting of immunity is required under the law. This may be a major

impediment to efficient investigation, especially in cases where immediate investigative actions that fall under the scope of protection by immunity are required.

Element A is compliant considering that the immunity in one applicable case in 2022 was lifted on the next day following the submission of the request, so no undue delay was allowed.

Element B is not compliant considering that the legislation does not provide clear criteria, e.g., considerations taken into account for lifting immunity for a range of public officials.

Element C is not compliant, considering that the procedure for lifting the immunity of high-level officials is not regulated in sufficient detail.

Element D is not compliant considering that the procedures for lifting immunity from applying investigative methods, e.g., searches on premises, may very likely impede the investigation and prosecution of the corruption offence in other ways.

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	X

The monitoring team discovered two allegations of high-level corruption linked to public officials and their family members that were published by OCCRP on its website in January[20] and February[21] 2022. The authorities stated that national law enforcement agencies had not received any information on the allegations. Further on, the authorities noted that, in accordance with Article 206(1) of the CPC, information held by the media concerning an offence committed or planned that is deemed to constitute grounds for commencing criminal proceedings, shall be sent to the prosecuting authorities after its disclosure in the press, radio, or television. In addition, the media and the authors of the information must present the documents in their possession confirming the published allegations to the preliminary investigator, the investigator, the prosecutor in charge of the investigation, or the court (Article 206(3)). Correspondence addressed to the media about an offence committed or planned that has not been published, shall be sent by media officials to the prosecuting authorities in a manner prescribed by Article 205 of the CPC (Article 206(2)). Article 205(1) of the CPC stipulates that information shall be provided in the form of a letter, a confirmed telegram, a telephone message, a radio message, a telex, or other approved form of communication. Documents confirming the commission of the offence shall be attached to the letter sent by the legal entity or official (including the media) to report the offence (Article 205(2)). Moreover, a letter reporting an offence committed or planned shall state the full name of the legal entity, or the family name, first name and father's name of the official, the official's work address, his/her connection with the offence and the source of the information, as well as information about documents attached to the letter (Article 205(3)). With respect to the obligation of reporting the source of information on alleged corruption offence, the Government referred to Article 15(2) of the Law "On Media,", endorsed on 30 December 2021, stipulating that the media cannot be requested to disclose the source of information except on a few grounds mentioned in the Article 15(3).

[20] https://www.occrp.org/en/investigations/bp-turned-a-blind-eye-to-corruption-in-prize-azerbaijan-gas-project

[21] https://www.occrp.org/en/suisse-secrets/sons-of-azerbaijani-strongman-vasif-talibov-received-millions-from-money-laundering-systems

While the CPC does not allow authorities to launch a formal investigation solely based on corruption allegations published in the media, Article 11(2)(3) of the Law “On Operative-Search Activity” stipulates that information published in the media can be the reason for the implementation of operative-search activity that may develop into a formal criminal investigation.

In the opinion of the monitoring team, the procedural duty of the media to provide the authorities with the documents at their disposal confirming published allegations of corruption is a deterrent to the publication of such allegations in Azerbaijan. Also, the lack of a procedural basis for launching criminal investigations into published allegations without an official application from the media being received, is an obstacle to the effective investigation of published allegations of corruption, especially in relation to allegations published in foreign media.

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Azerbaijan

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The fifth round of monitoring under the Istanbul Anti-Corruption Action Plan assesses Azerbaijan's anti-corruption practices and reforms against a set of indicators, benchmarks and elements under nine performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. The report analyses Azerbaijan's efforts to build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement. A follow-up report evaluating Azerbaijan's progress in these areas will follow.

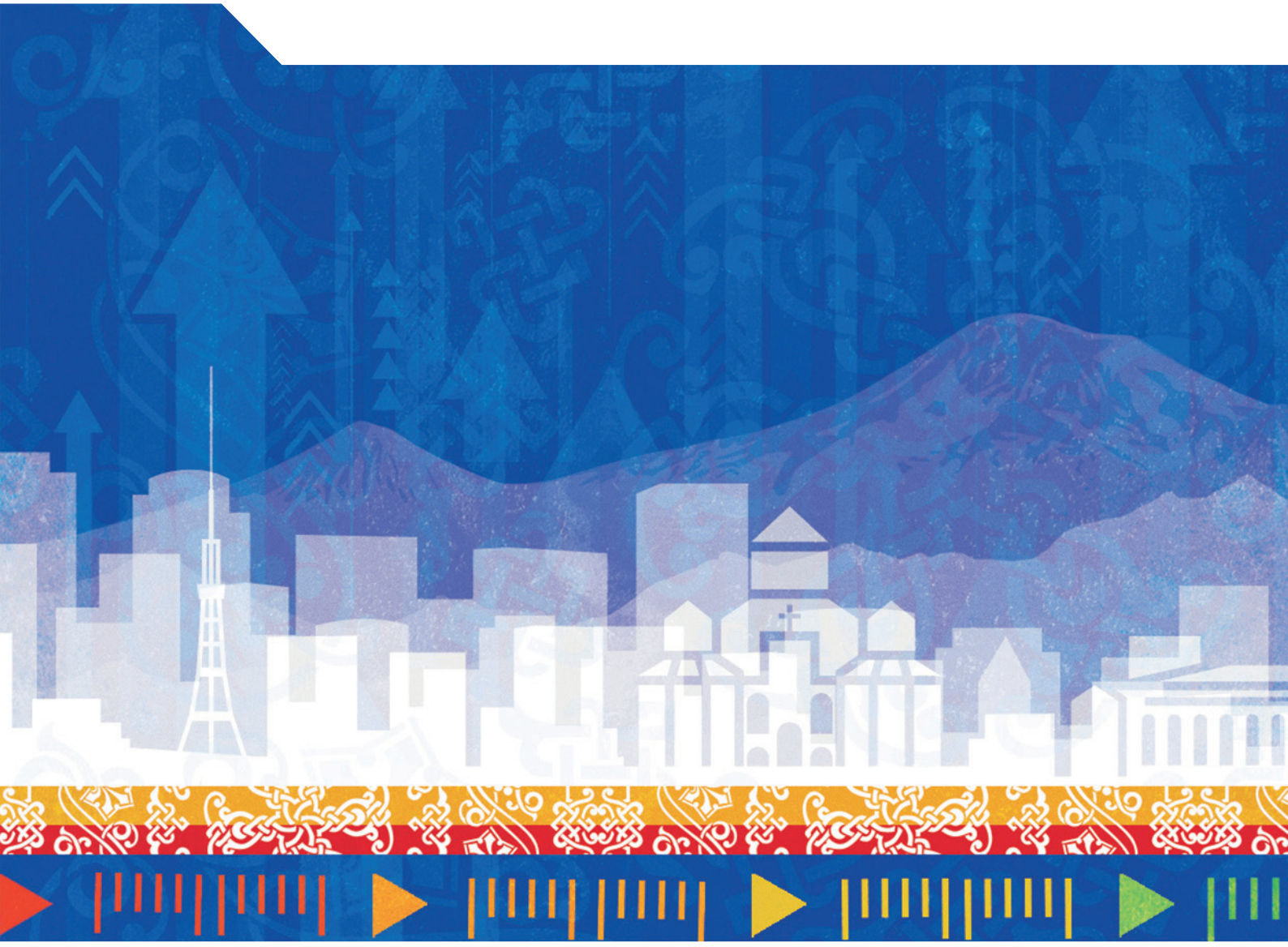
Funded by
the European Union

PDF ISBN 978-92-64-34460-0

9 789264 344600

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN



OECD

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the OECD and do not necessarily reflect the views of the European Union.

Please cite this publication as:
OECD (2024), *Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia: The Istanbul Anti-Corruption Action Plan*, OECD Publishing, Paris, https://doi.org/10.1787/fb158bf9-en.

ISBN 978-92-64-97617-7 (PDF)

Photo credits: Cover design © Angelique Portrait Photography LTD.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

Foreword

The present monitoring report was prepared within the framework of the 5th Round of Monitoring of the Istanbul Anti-Corruption Action Plan (IAP) - a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The IAP brings together ten countries from the region: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine and Uzbekistan. Other countries of the region, OECD countries, international organisations, and non-governmental partners participate in the implementation of the IAP as experts and donors.

The ACN introduced an indicator-based peer review for the IAP 5th Round of Monitoring (2023-2026). After the pilot that tested the new methodology was completed, the revised IAP 5th Round of Monitoring Assessment Framework and Monitoring Guide were agreed upon by the ACN Steering Group in November 2022. The framework benefited from a thorough and inclusive consultative process, marking strong ownership and commitment of the participating countries. The 5th Round of Monitoring was launched in January 2023 in Armenia, Azerbaijan, and Moldova with the support of the EU for Integrity Programme. Due to Russia's large-scale war of aggression against Ukraine, its review was conducted with a reduced substantive scope, covering selected areas under the Assessment Framework.

The monitoring team for Armenia included Mr. Daniel Belingher (Romania), Mr. Evgeny Smirnov (EBRD), Ms. Ludmila Chovancova (Slovakia), Ms. Mary Butler (USA), Ms. Olena Tanasevych (Ukraine), Ms. Sintija Helviga-Eihvalde (Latvia) and Ms. Stana Maric (EBRD). Ms. Anca Jurma, the IAP Vice-Chair (Romania), was a team leader for the monitoring. The Secretariat team also included Mr. Dmytro Kotlyar (Consultant), Ms. Natalia Baratashvili (Anti-Corruption Analyst), Ms Arianna Ingle (editorial support) and Ms. Gabriele Verbickaite (Administrative Assistant).

The coordination team from the Ministry of Justice of Armenia included Mr. Karen Karapetyan, Deputy Minister of Justice, IAP National Coordinator, Ms. Hasmik Tigranyan, Acting Head of the Anti-corruption Policy Development and Monitoring Department, Mr. Yeprem Karapetyan, Head of Division of Anti-corruption Policy Development of the Anti-corruption Policy Development and Monitoring Department, Ms. Tatevik Khachatryan, Chief Specialist of the Monitoring Division of the Anti-corruption Policy Development and Monitoring Department.

The assessment of Armenia was launched in December 2022. Armenia provided replies to the questionnaire with supporting materials between 4-11 March 2023. Responses to the questionnaire for non-governmental stakeholders were submitted by the Corporate Governance Center, Transparency International Anti-Corruption Center, Democracy Development Foundation, Law Development and Protection Foundation, Protection of Rights without Borders, and the National Center of Public Policy Research. The physical on-site visit in Yerevan took place on 17-21 April 2023 and included 14 sessions with governmental and non-governmental stakeholders, including the business community. The authorities provided comments on the first draft report on 22 June 2023. Non-governmental stakeholders (Law Development and Protection Foundation, Democracy Development Foundation, Transparency International Anticorruption Center, Protection of Rights without Borders, Corporate Governance Center, and National Centre of Public Policy Research) commented on the draft report. Following bilateral

consultations held in September and October, Armenia's monitoring report was discussed and adopted at the ACN Plenary meeting on 3-5 October 2023.

Table of contents

FIGURES

TABLES

Acronyms

ACC	Anti-Corruption Committee
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
AMD	Armenian Dram
CBA	Central Bank of Armenia
CPC	Corruption Prevention Commission of Armenia
COI	Conflict of interest
EAEU	Eurasian Economic Union
EBRD	European Bank for Reconstruction and Development
FH	Freedom House
IAP	Istanbul Anti-Corruption Action Plan
GRECO	Group of States Against Corruption
LCPC	Law on Corruption Prevention Commission of Armenia
LPA	Law on Procurement of Armenia
LPS	Law on Public Service of Armenia
LSW	Law on the System of Whistleblowing
NA	National Assembly of Armenia
NGO	Non-governmental organization
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
PA	Performance Area
PGO	Prosecutor General's Office
RA	Republic of Armenia
SOE	State-owned enterprise
SJC	Supreme Judicial Council
TI	Transparency International
UNCAC	United Nations Convention against Corruption
WEF	World Economic Forum
WB	World Bank
WTO GPA	Agreement on Government Procurement of the World Trade Organization

Methodology

The IAP 5th round of monitoring uses an indicator-based methodology to ensure higher objectivity, consistency, and transparency of peer reviews. The IAP 5th round of monitoring Assessment Framework and Monitoring Guide derive from international standards and good practices based on a stocktake of the previous IAP monitoring rounds highlighting achievements and challenges in the region.[1] The indicators evaluate anti-corruption policy, prevention of corruption, and criminal liability for corruption, with a focus on practical application and enforcement, particularly at a high-level.

The 5th round monitoring Assessment Framework includes nine Performance Areas (PAs) with four indicators each and a set of benchmarks under each indicator. Benchmarks are further split into elements to ensure the granularity of the assessments and recognition of progress.

The maximum possible score for a Performance Area is 100 points. Indicators under each Performance Area have an equal weight (25 points each). Benchmarks also have an equal weight within an indicator. The exact maximum weight of a benchmark depends on the overall number of benchmarks included in the indicator (i.e., the total weight of the indicator divided by the total number of benchmarks within that indicator).

Each benchmark and its elements (numbered as ''A'', ''B'', ''C'', ''D'' …) are scored individually by three different scoring methods. The performance level for each Performance Area is determined by aggregating scores of all benchmarks within the respective Performance Area according to the below scale (Table 1). Scores of Performance Areas are not aggregated.

Table 1. Performance level

PERFORMANCE LEVEL	A OUTSTANDING	B HIGH	C AVERAGE	D LOW
SCORE	76-100	51-75	26-50	<25

[1] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia.

Executive summary

The year 2022 marked significant changes in the anti-corruption framework of Armenia, with many initiatives aimed at strengthening the legislative framework and improving anti-corruption prevention and enforcement. They included changes in the conflict-of-interest management and whistle-blower protection legislation, the launch of mandatory disclosure of information on beneficial ownership of companies, strengthening the anti-corruption institutional set-up, the introduction of civil confiscation of unjustified assets, and of the criminal liability of legal persons. If implemented effectively, these initiatives will significantly improve the anti-corruption landscape in the country.

The ambitious anti-corruption policy documents of Armenia focused on strengthening the institutional set-up of the anti-corruption system and enhancing the legal framework. An inclusive and extensive public consultation process with the active participation of civil society contributed to the quality of the Anti-Corruption Strategy and its 2019-2022 Action Plan. The Anti-Corruption Department of the Ministry of Justice, performing the functions of the Secretariat of the Anti-Corruption Policy Council, significantly increased the quality of coordination, monitoring and evaluation of the anti-corruption policy. To achieve further progress, the country needs to address remaining deficiencies, including insufficient staff in the Anti-Corruption Department, secure high-level political support for the Secretariat, and address the low level of implementation of anti-corruption commitments.

In 2022, authorities significantly improved the legal framework for preventing and managing conflict of interest (COI), although many amendments were enacted outside the assessment period. While making efforts to align with international standards is a step forward, a harmonized and clear legal framework, including consistent COI rules for different categories of public officials, remains to be developed. The enforcement of COI rules was a challenge, with little tangible progress achieved in 2022. On the other hand, Armenia had a robust legal framework for asset declarations with a comprehensive coverage of public officials and a broad content of disclosure. The online declaration system was accessible to the public, and the scope of restricted data was limited. Verification of asset and interest declarations and routine application of administrative sanctions was ensured in practice. Besides, significant progress in setting up the Corruption Prevention Commission was recorded, which is commendable; however, the agency significantly lacked human, financial, and operational resources.

The Law on the System of Whistle-blowing presented a solid foundation for protecting reporters of corruption, although the enactment of recent changes in 2023 was outside the evaluation period. To further encourage reporting of corruption, authorities should build trust in the reporting channels and available protection measures. Further efforts to set up internal channels in the public sector in practice shall be made. An electronic platform was actively used for submitting whistle-blower reports. However, the provisions on the protection and different remedies available to whistle-blowers have not been tested in practice. The Human Rights Defender, responsible for monitoring the enforcement of the whistle-blower protection legislation, lacked a dedicated unit or staff.

The Corporate Governance Code aiming at establishing responsibilities of listed companies' boards to oversee risk management existed, but compliance with the code remained weak. The governance of five state-owned enterprises (SOEs) selected for the assessment was not in line with international standards,

the anti-corruption legislation did not cover SOEs, and corruption risks were high. The SOEs had a low level of transparency and poor reporting. In 2022, Armenia introduced the mandatory disclosure of the company's beneficial ownership. The definition of beneficial owner complied with the FATF standard; information about the beneficial owners was collected and published in machine-readable format. However, in 2022, the full scope of data on beneficial owners was available only in extractive sector companies. Armenia should take measures to ensure implementation of the disclosure requirements and enforce sanctions for a failure to submit or update information or false information about beneficial ownership. There was no dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities in Armenia, even though the business sector would welcome such a mechanism.

Armenia had a well-established legal framework for public procurement, which was supported by the electronic procurement platform (ARMEPS) with open eligibility and broad coverage of all key procurement stages. The public procurement system aligned with international best practices and offered a range of procurement methods depending on the estimated value, complexity, and nature of the procurement. While many contracting authorities were connected to the ARMEPS, the electronic procedures were still not mandatory for all contracting entities. The share of single-source (direct) contracts in the total procurement value of all public sector contracts was 25 % which is unreasonably high. Other challenges included the need to enhance the effectiveness of oversight mechanisms, address different forms of conflict of interest in practice and legislation, and further streamline procurement processes.

Steps to increase independence, integrity and accountability of the judiciary in line with international standards taken so far are commendable, but further reforms are needed. The Supreme Judicial Council and three other judicial institutions operated as judicial governance bodies in charge of the judicial career, evaluation, training, and discipline. Their composition mostly complied with the assessment framework, except for the training commission and ethics and disciplinary commission, in which the civil society representation should be increased. Armenia should also consider measures to avoid the politization of appointments of judges and members of the judicial governance bodies, for example, by prohibiting former officials holding a political office to be selected in these positions. In 2022, judges were selected and promoted through competitive procedures, but the merit-based evaluation selection and promotion system should be strengthened. Some grounds for the disciplinary liability of judges were formulated vaguely and used in practice. The right of judicial appeal against disciplinary decisions of the Supreme Judicial Council did not exist in 2022, thereby affecting judges' rights to fair trial in disciplinary proceedings.

The selection of the Prosecutor General was not merit-based and competitive; political interests influenced the process. Some of the grounds for the pre-term dismissal of the Prosecutor General were vague and allowed unfettered discretion. Armenia had no prosecutorial governance bodies to insulate the prosecution service from political influence. Closed competitions for positions in the prosecution service and the promotion system were not transparent and based on merits, leaving broad discretion to the Prosecutor General. In practice, the integrity checks impacted prosecutorial appointments, which is commendable, although this practice needs to be institutionalized into formal selection criteria. The positive experience of selecting prosecutors for the specialized department on civil confiscation with the engagement of an international expert should be used to improve the recruitment procedures for other prosecutors. Disciplinary proceedings against prosecutors could be streamlined, particularly by establishing narrow grounds for liability.

The anti-corruption investigative jurisdiction and institutional set-up have been significantly strengthened in Armenia during the past two years. The Anti-Corruption Committee started operating in 2021, supported by the new dedicated department in the Prosecutor's General Office. The head of the Anti-Corruption Committee was selected through an open process. Although a Department for Confiscation of Property of Illicit Origin was set up in 2020 within the Prosecutor General’s Office, with competence in the recovery of assets in civil proceedings, which is a positive development, no dedicated agency, unit, or staff in the institutional arrangement was mandated to identify and trace criminal proceeds and manage seized and

confiscated assets in criminal corruption cases. Institutional reform was ongoing, and the new anti-corruption institutions must focus on improving their capacity and transparency.

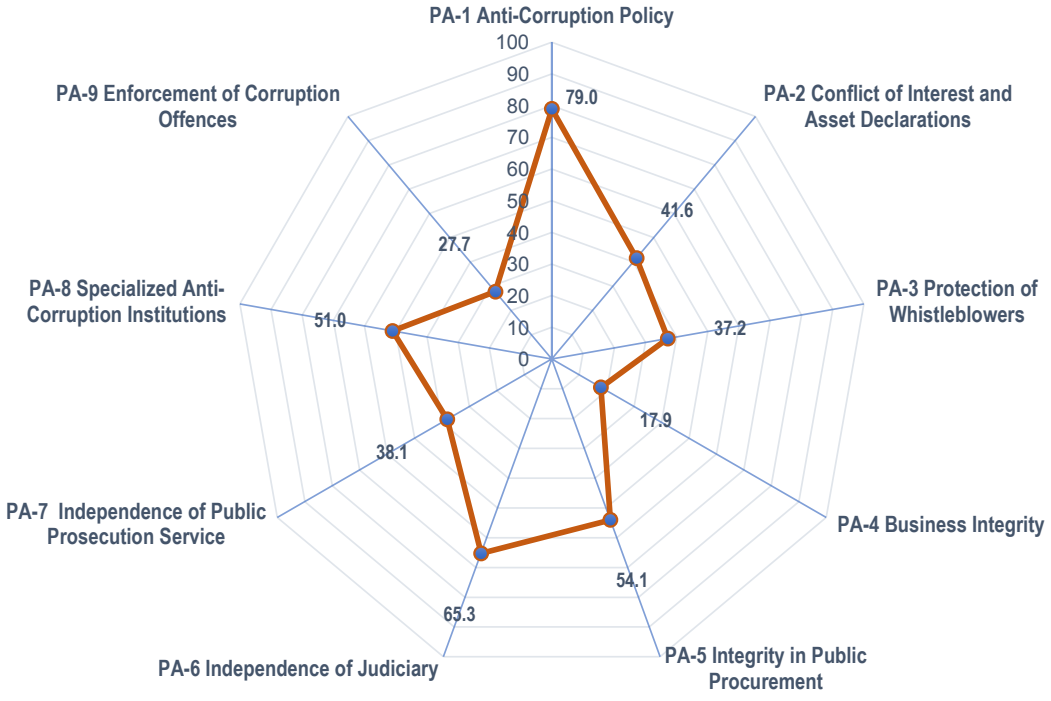
The liability for corruption offences was enforced, but the number of convictions was low in 2022. There was only one case of conviction of a high-level official and no cases of confiscating corruption proceeds. Besides, there were no convictions for money laundering, with corruption as a predicate offence or for standalone money laundering. The annual report of the Prosecutor General on the prosecution of corruption crimes was a good practice example of collating and publishing criminal statistics. Civil confiscation of property of illicit origin was a new promising instrument that has been actively enforced, with the first confiscation orders expected in 2023. Another significant step was the introduction of criminal liability of legal persons by the new Criminal Code adopted in 2022. However, the entry into force of the provisions on criminal liability of legal persons was outside the evaluation period.

Table 2 shows Armenia's performance levels for all evaluated areas and the total score in each performance area based on the following scale:

Table 2. Performance level and scores of Armenia by Performance Area

Performance Area	Performance Level	Score
PA-1 Anti-Corruption Policy	A	79
PA-2 Conflict of Interests and Asset Disclosure	C	42
PA-3 Protection of Whistleblowers	C	37
PA-4 Business Integrity	D	18
PA-5 Integrity in Public Procurement	B	54
PA-6 Independence of Judiciary	B	66
PA-7 Independence of Public Prosecution Service	C	38
PA-8 Specialised Anti-Corruption Institutions	B	51
PA-9 Enforcement of Corruption Offences	C	28

Figure 1. Anti-Corruption Performance of Armenia by Performance Area



1 Anti-corruption policy

Significant changes in the political landscape in 2018 created momentum for new anti-corruption commitments reflected in the Anti-Corruption Strategy of Armenia and its 2019-2022 Action Plan. The ambitious policy documents focused on strengthening an institutional set-up of the anti-corruption system and enhancing the legal framework. A high level of inclusion and participation of non-governmental stakeholders in policy development contributed to the quality of strategic documents and created a sense of ownership over the commitments. The authorities should use a risk-based approach in the next policy cycle and build a clear link between expected outcomes, set measures, and indicators at the very outset to ensure consistent performance and deliver the desired impact. In 2022, authorities used a sound monitoring and evaluation methodology. A low level of implementation of policy documents remained a challenge. The Anti-Corruption Department of the Ministry of Justice improved the functions for coordination and monitoring of the anti-corruption policy implementation. To achieve further progress, Armenia needs to address existing deficiencies, including insufficient staff in the dedicated Department, and secure its high-level political support.

Figure 1.1. Performance level for Anti-Corruption Policy is outstanding

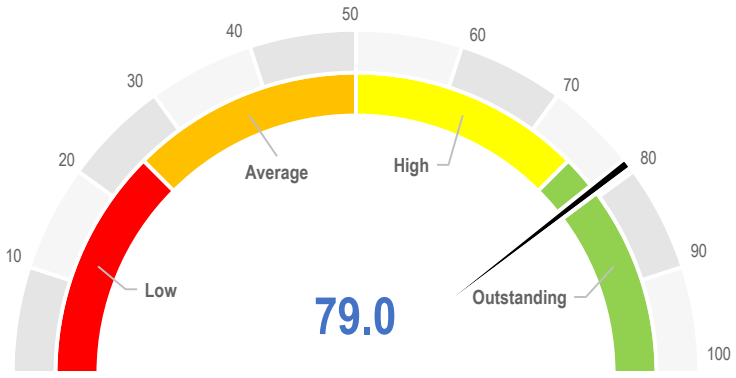
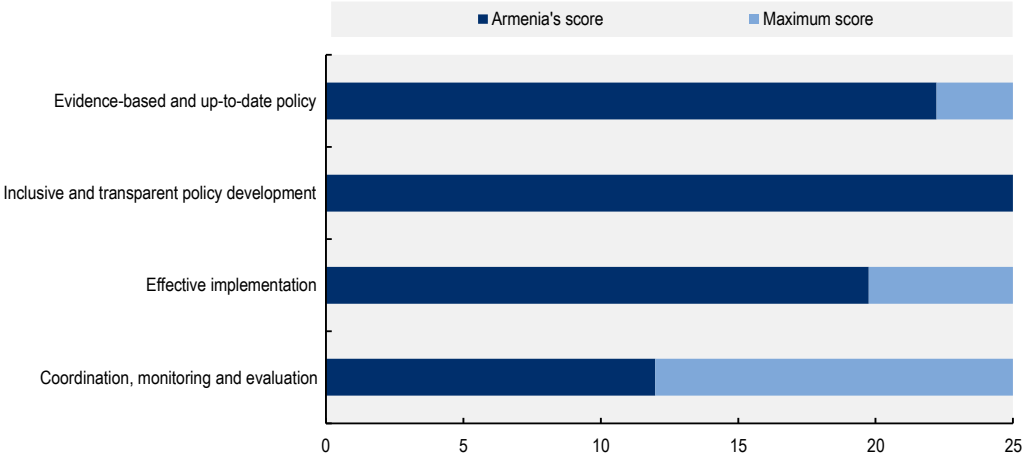


Figure 1.2. Performance level for Anti-Corruption Policy by indicators



Indicator 1.1. The anti-corruption policy is evidence-based and up-to-date

Background

The fourth Anti-Corruption Strategy of Armenia and its 2019-2022 Action Plan were adopted in 2019. The Department of Anti-Corruption Policy Development and Monitoring of the Ministry of Justice, functioning as a Secretariat, amended the Strategy and Action Plan in August 2022. Government Decision N1332 on the Approval of the Anti-Corruption Strategy of the Republic of Armenia and its Implementation Plan for 2019-2022 reflected the changes to policy documents. Both documents expired on 31 December 2022, and the development of new policy documents for 2023-2026 was ongoing during the monitoring.

Assessment of compliance

Armenia's Strategy and Action Plan went through an extensive design process. The policy documents, structured around five strategic directions, are supported by various sources, including assessments by international organizations and survey results. However, the policy documents lacked a risk-based perspective and did not consider the reports of the anti-corruption agencies. More efforts to build a clear link between defined measures, outcomes, and indicators shall be ensured. While the government updated the policy documents once, the update took place four months before the end of the policy cycle.

Benchmark 1.1.1.

The following evidence has been used for developing objectives and measures of the policy documents, as reflected in the policy documents or their supporting materials:

Element	Compliance
A. Analysis of the implementation of the previous policy documents (if they existed) or analysis of the corruption situation in the country	✓
B. National or sectoral corruption risk assessments	X
C. Reports by state institutions, such as an anti-corruption agency, supreme audit institution, and law enforcement bodies	X
D. Research, analysis, or assessments by non-governmental stakeholders, including international organisations	✓
E. General population, business, employee, expert, or other surveys	✓
F. Administrative or judicial statistics	✓

The Anti-Corruption Strategy (Strategy) and its 2019-2022 Implementation Plan (Action Plan) were supported by A range of data sources and included multiple measures grouped across five strategic directions.

An analysis of the implementation of the previous policy document is provided in Chapter 1.1. of the Strategy (''Assessment of the Anti-Corruption Strategy of the Republic of Armenia and the 2015-2018 Action Plan for the Implementation thereof'') that reflected a very brief stocktake of achievements and lists a few shortcomings of the previous Anti-Corruption Strategy (2015-2018). The weak points included a lack of a solid framework of indicators, inadequate policy implementation, insufficient monitoring and coordination mechanisms, and an excessive emphasis on legislation rather than practice. While this analysis is sufficient for compliance with **element A**, the monitoring team considers that the assessment of the implementation shall be more comprehensive and holistic to distil lessons and provide recommendations for subsequent strategies.

Regarding **element B**, the Action Plan included a commitment to create a corruption risk assessment methodology to point out vulnerabilities and provide input in the next anti-corruption policy design phase. However, the government did not conduct a risk assessment on the national level or in selected areas to identify corruption risks or their factors that should be addressed through the anti-corruption policy.

The policy documents and supporting materials did not refer to specific reports of state institutions (e.g., supreme audit institution, law enforcement bodies, etc.) as required by **element C**. According to the Anti-Corruption Department of the Ministry of Justice, it received information from other state institutions, but the monitoring team believes that it was a sporadic exchange of information rather than a collection and review of relevant reports.

The government incorporated outstanding international commitments and recommendations, such as OGP, OECD/ACN, and GRECO, in the policy documents. While this is sufficient for compliance with **element D**, as confirmed by civil society, the Strategy did not explicitly refer to reports or studies developed by non-governmental organisations, which is a deficiency. The Strategy and Action Plan also successfully utilised data from various international indices (**element E**), such as the Corruption Perception Index and Global Corruption Barometer by Transparency International, and surveys conducted by public authorities and a few non-governmental organizations. As for the use of statistics (**element F**), some of the objectives and baseline indicators of the policy documents were formulated based on the administrative data produced by governmental agencies (number of whistle-blowing cases, number of criminal proceedings, etc.). A few NGOs noted that the volume of the used administrative data in the policy documents should be increased, and more efforts to ensure its systematic collection throughout the Strategy and Action Plan implementation period needs to be made.

Overall, the Strategy and Action Plan went through an extensive design process and relied on a variety of information sources listed in the benchmark. However, the amendments made to the policy documents in 2022 (see below, benchmark 1.1.2.) demonstrate that a more thorough understanding of systematic weaknesses and corruption risks shall be ensured. Thus, as the new anti-corruption policy documents are in the development stage, the monitoring team recommends integrating a risk-based approach to understanding corruption drivers better. Besides, the monitoring team agrees with the opinion of non-governmental stakeholders that a more comprehensive and meaningful analysis of a broader range of administrative data and reports produced by anticorruption agencies shall be ensured.

Benchmark 1.1.2.

	Compliance
The action plan is adopted or amended at least every three years	✓

Amendments to the Strategy and Action Plan entered into force in August 2022, just four months before the end of the policy cycle. The amendments expanded the scope of monitoring and introduced new forms for semi-annual and annual reporting, as well as a new measurement scale for assessing progress. Besides, a number of substantial changes to the Action Plan were made. The latter included reformulating some objectives and measures, adding new outcome indicators, and revising targets and timelines.

While the update took place within the timeframe required by the benchmark and the introduced changes were based on findings of the previous monitoring reports, the monitoring team recommends ensuring that a revision takes place timely, allowing to promptly identify and take account of noncompliance before the end of the policy cycle. Additionally, the government should ensure a more inclusive process of the development of policy updates, especially regarding the engagement of non-governmental stakeholders (see the Opinion of the Non-governmental stakeholders under Performance Area 1).

Benchmark 1.1.3.

Policy documents include:

Element	Compliance
A. Objectives, measures with implementation deadlines, and responsible agencies	✓
B. Outcome indicators	✓
C. Impact indicators	✓
D. Estimated budget	✓
E. Source of funding	✓

The Strategy and Action Plan were in line with all elements of the benchmark. The Strategy had a clear structure - nine broadly formulated objectives (**element A**) aligned with the overall goals across five strategic directions – institutional development, prevention, investigation of corruption-related cases, public awareness and education, and monitoring. It included a description of each objective, a reference to responsible agencies, and an overview of policy measures. In the Action Plan, the objectives were broken down into outputs, annual targets and their indicators, an implementation timeline, and a responsible agency.

Two types of indicators were also developed. Outcome indicators (**element B**) were included in the Action Plan as 'Indicators of the result-oriented monitoring'' with a baseline value and specific targets. The section ''Indicators of the result-oriented monitoring'' in the Action Plan and the Strategy included a few impact indicators (**element C**). Namely, two impact indicators aimed to assess a change in the level of perception of corruption in local self-governance bodies and increase citizens' awareness about anti-corruption programmes. In other cases, the government used proxy indicators – international indices such as the Corruption Perception Index (TI), Corruption Control Index (WB), and Global Competitiveness Index (WEF). For technical compliance with **element C**, the limited number of mentioned impact indicators is sufficient. However, the monitoring team notes that the government shall identify a broader range of medium and long-term impact indicators assessing the causal effect of the objectives in the next policy circle.

Appendix 3 of the Government Decision "On Approving the Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022" provided the estimate for each output and objective and the total budget of the policy documents (**element D**). Besides, the Action Plan indicated the funding source for each measure (**element E**).

Overall, while the strategic documents had all the required elements, the authorities noted that the Anti-Corruption Department identified the issue of the insufficient number of impact indicators and that some outcome indicators were incomplete or incompatible with the objectives. These shortcomings led to the revision of the policy documents in 2022. In the next policy cycle, the monitoring team recommends authorities ensure a logical framework where a clear link between defined objectives, measures, and indicators, including meaningful impact indicators, is built from the outset.

Indicator 1.2. The anti-corruption policy development is inclusive and transparent

Background

The anti-corruption policy documents went through a consultation process in 2019. The dedicated portal (a unified website for ***publishing*** draft legal acts www.e-draft.am) lists comments submitted during two rounds of consultations.

Assessment of compliance

The policy documents went through an inclusive and extensive public consultation process, with the active participation of civil society. The non-governmental stakeholders also praised the high level of transparency and cooperation in drafting. The mandatory use of a dedicated public consultation platform and publication of written responses to more than 170 submitted comments represents a good example of participatory public consultations.

Benchmark 1.2.1.

The following is published online:

Element	Compliance
A. Drafts of policy documents	✓
B. Adopted policy documents	✓

Both draft policy documents and adopted versions (**elements A and B**) were published and available at the time of monitoring. The first draft of the Strategy and Action Plan was published on a unified website for publication of legal acts' drafts (www.e-draft.am) in December 2018.[2] The second round of consultations started in June 2019, when the substantially revised drafts were published again.[3] The platform was easily accessible to all interested parties. The non-governmental organizations believed the anti-corruption policy development process was highly inclusive and participatory. The monitoring team commends the high uptake of suggestions provided by the non-governmental organizations.

In October 2019, the Government adopted the Anti-Corruption Strategy and three other Annexes – an Action Plan, a Financial Assessment of the Action Plan, and Monitoring and Evaluation Forms. The policy documents were published on the Legal Information System Portal - https://www.arlis.am.[4] The adoption was disseminated through social and mass media outlets.

[2] https://www.e-draft.am/en/projects/1439.

[3] https://www.e-draft.am/projects/1733.

[4] https://www.arlis.am/DocumentView.aspx?DocID=168051.

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

Element	Compliance
A. With sufficient time for feedback (no less than two weeks after publication)	✓
B. Before adoption, the government provides an explanation regarding the comments that have not been included	✓
C. An explanation of the comments that have not been included is published online	✓

The Strategy and Action Plan went through an extensive consultative process conducted in a highly participatory manner and in close cooperation with non-governmental stakeholders and, thus, compliant with all three elements of the benchmark. The mandatory use of the unified platform to publish draft legal acts offered transparency to the drafting process and extended consultations to a broader group of stakeholders. The first draft of the Strategy and Action Plan went through public consultations from 19 December 2018 to 31 January 2019 (**element A**).[5] After submitting an extensive list of comments, the drafts were substantially revised, and the second revised versions were published on the same platform from 10 June 2019 until 20 July 2019. The non-governmental stakeholders highly praised the efforts to reflect most of the suggestions the civil society representatives provided to the first draft.

Before the adoption, the platform www.e-draft.am listed all comments submitted during two rounds of consultation (more than 170 comments in total) and summarized responses provided by the authorities to each comment (**elements B and C**). The government also held an extended public consultation, which included ten public discussions and two discussions within the Anti-Corruption Policy Council and with international partners. As required by **element C**, the list of government responses included an overview of changes made as a result of each comment and reasons for not accepting or partially accepting submitted comments.

The monitoring team believes that the close cooperation with non-governmental stakeholders, the use of a dedicated public consultation platform, and a high level of openness that contributed to the quality of final policy documents and increased awareness of stakeholders is commendable.

Indicator 1.3. The anti-corruption policy is effectively implemented

Background

The monitoring of the annual implementation of policy documents was conducted by the Anti-Corruption Department of the Ministry of Justice. The dedicated department enhanced the monitoring and evaluation system and introduced a new measurement scale and templates in 2022. The implementation rate for 2022 was reflected in the Monitoring and Evaluation Report finalized in 2023.

Assessment of compliance

As evidenced by the latest Monitoring and Evaluation Report 2022, a low level of implementation of policy documents (58%) was a challenge.

[5] Project for activities for the anti-corruption strategy and its implementation of 2019-2022 - e-draft.am.

Benchmark 1.3.1.

	Compliance
Measures planned for the previous year were fully implemented according to the government reports	58%

The Monitoring and Evaluation Report for 2022[6] demonstrates that only 58% of measures (25 out of 43 measures) foreseen in the Anti-Corruption Strategy and Action Plan were fully implemented. 19% (8 measures) were mostly implemented, 16% (7 measures) were partly implemented, and 7% (3 measures) were not implemented.

According to the Monitoring and Evaluation Report for 2022, the overall performance of the strategic documents was 80.2%. The performance was calculated via a ''weighted average method of variation series''[7] by assessing each objective through the following scale: (1) implemented completely (91-100% of activities implemented within measure); (2) mostly implemented (61-90%); (3) implemented partially (31-60%); (4) not implemented (<30%). The monitoring team is concerned that while the applied scoring method resulted in an overall 80.2% implementation rate, only 25 measures (out of 43) were implemented fully in practice. Considering these results, the monitoring team encourages authorities to ensure that the lack of implementation (18 measures not implemented fully) is communicated in a timely manner and the necessary steps to address the gaps and thoroughly analyse the achieved results per each objective are taken before the end of the policy circle.

The Monitoring and Evaluation report explained incomplete implementation due to various factors, delays in adopting legal drafts by the National Assembly, insufficient time for implementation, and a lack of human resources in the Commission for Prevention of Corruption.

Benchmark 1.3.2.

	Compliance
Anti-corruption measures unimplemented due to the lack of funds do not exceed 10% of all measures planned for the reporting period	✓

The Monitoring and Evaluation Report for 2022 explicitly references the lack of funds as a barrier only in relation to the development of mechanisms for oversight over compliance with integrity rules of persons to be appointed to state positions (measure 9) and insufficient human resources for the establishment of the Anti-Corruption Committee (measures 2). Thus, only two measures out of 43 were not implemented due to the lack of funds, which is less than 10% required by the benchmark.

[6] https://moj.am/storage/files/pages/pg_7967694028641_AC_M-A_Report_final_2023-compressed_1_.pdf.

[7] The Anti-Corruption Strategy of Armenia, para. 133-134.

Indicator 1.4. Coordination, monitoring, and evaluation of anti-corruption policy is ensured

Background

The Department of Anti-Corruption Policy Development and Monitoring (Anti-Corruption Department) within the Ministry of Justice, performing functions of the Secretariat of the Anti-Corruption Policy Council, is charged with driving policy development, monitoring, and evaluating the Anti-Corruption Strategy and Action Plan. The annual monitoring reports developed on an annual basis provided an overview of implementation progress against yearly targets, described civil society participation, and reported on challenges.

Assessment of compliance

The increase in the quality of coordination, monitoring, and evaluation mechanisms by the Anti-Corruption Department is commendable. However, considerations to increase available human resources and the authority of the dedicated department to influence the implementation shall be made. While the high-level political body (Anti-Corruption Council) chaired by the Prime Minister and operational Working Group was in place, there was an evident lack of regular activity in 2022. Non-governmental stakeholders were engaged in the coordination, and their input was reflected in monitoring reports for 2021 and 2022.

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

Element	Compliance
A. Coordination and monitoring functions are assigned to dedicated staff (secretariat) at the central level by a normative act, and the staff is in place	✓
B. The dedicated staff (secretariat) has powers to request and obtain information, to require participation in the convened coordination meetings, to require submission of the reports of implementation	X
C. Dedicated staff (secretariat) has the resources necessary to conduct respective functions	X
D. Dedicated staff (secretariat) routinely provides implementing agencies with methodological guidance or practical advice to support policy implementation	✓

The Anti-Corruption Department of the Ministry of Justice is entrusted with the policy development, coordination, evaluation, and monitoring functions based on the Prime-Minister Decision No. 1332-N (**element A**). The Department included two Divisions - Anti-Corruption Policy Development Division and Monitoring Division. The Monitoring Division, as the Secretariat of the Anti-Corruption Council, is solely responsible for the coordination, implementation, monitoring, and evaluation. In 2022, it had three dedicated staff members. Thus, the country is compliant with **element A**.

In terms of the functions of the Monitoring Division (**element B**), it exclusively focused on coordinating the implementation of anti-corruption policy documents, methodological support of focal points, drafting monitoring and evaluation reports, providing methodological support to responsible focal points, reporting on international anti-corruption commitments, and supporting the Anti-Corruption Policy Council. The powers of the Division were established by the Charter of the Department, where the only power mentioned was a power to require the submission of monitoring reports and, therefore, not compliant with this element.

However, the changes introduced to the Law on Public Service (Article 46.3) in December 2022 clearly established the functions and powers of the Anti-Corruption Department (performing the functions of the Secretariat of the Anti-Corruption Policy Council). Among them, methodological assistance, advice to agencies responsible for the implementation of the anti-corruption programs under the Anti-Corruption Strategy and other programs, as well as coordination of the implementation of other sectoral international obligations. The amendments stated that the coordinating body is entitled to request and receive information and documents from persons in charge of anti-corruption program implementation and submit proposals on implementing international commitments. The amendments entered into force on 2 January 2023 and, thus, fall outside the monitoring period.

As regards the staff of the Anti-Corruption Department (**element C**), in 2022, its Monitoring Division had only three officials, including the Head of the Division. In comparison, in 2020, in addition to three staff members, it also had three experts and one vacant position.[8] Considering the scope of monitoring and evaluation reporting (two reports per year based on a new measurement system) as well as an extensive number of implementing agencies (more than 77 state bodies and 54 local governance bodies), the available resources appeared to be limited. The human resource deficit in the dedicated department was directly mentioned as an obstacle to implementing a few activities of the Action Plan in the Monitoring and Evaluation Report. As noted during the onsite visit, the Department intends to request an increase in the budget to cover 18 additional positions. Therefore, the monitoring team is of the view that the country is not compliant with **element C**.

The authorities provided information about consultations provided (**element D**) to responsible agencies on drafting monitoring reports and two training sessions conducted with the support of international partners to increase awareness of focal points on their tasks and coordination process. The Anti-Corruption Department was successful in providing strong support to the implementing agencies.

A high-level coordination body is the Anti-Corruption Council. Its goal is to review anti-corruption strategies and related legal acts, sector-specific anti-corruption programs, implementation of the anti-corruption strategy, and monitoring results. Its composition included the Prime-Minister (chair), Minister and Deputy Minister of Justice, Chairperson of the Supreme Judicial Council, Prosecutor General, Chairperson of the Commission for Prevention of Corruption, Human Rights Defender, Head of the State Supervision Service, representatives from the Parliament and non-governmental stakeholders. The Council shall convene meetings not less than four times a year, although, in 2022, only one meeting took place. As reported by authorities, the Anti-corruption Task Force responsible for coordinating anti-corruption performance on the operational level was established in 2021. In total, it convened ten meetings, although no meetings were organized after 24 June 2022.

Overall, the monitoring team welcomes improvements in the quality of coordination, its frequency of communication between the stakeholders, and the overall work of the Anti-Corruption Department. However, given the extensive number of stakeholders and frequency of the monitoring, considerations to increase human resources within the dedicated department shall be made. In the monitoring team's opinion, the Department lacked the political weight to influence the implementation, ensure the active participation of independent government organizations, and enhance the accountability of engaged public agencies. This opinion is shared by the non-governmental stakeholders who consider that frequent leadership and staff turnover changes in the Ministry of Justice significantly affected the work of the Department. NGOs believed that the dedicated unit lacked support and political backing due to its position within the structure of the Ministry. A few stakeholders suggested that moving these functions back to the Prime Minister's Office may increase ownership over the commitments, especially among independent public agencies.

[8] See, 5th Round of Monitoring, Pilot Report of Armenia.

The monitoring team also recommends considering ways to secure high-level political support of the Anti-Corruption Department. The Government should also engage the National Assembly more proactively in the anti-corruption policy coordination to ensure political ownership of the reforms and a higher level of implementation.

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

Element	Compliance
A. A monitoring report is prepared once a year	✓
B. A monitoring report is based on outcome indicators	✓
C. A monitoring report includes information on the amount of funding spent to implement policy measures	X
D. A monitoring report is published online	✓

Monitoring of the Action Plan implementation was conducted semi-annually and annually and, thus, complied with **element A**. Particularly, according to the Strategy, annual monitoring reflected progress and obstacles in the implementation of defined measures and achievement of ''results-based indicators'' per each measure. The implementing agencies were obliged to submit annual self-assessment reports within ten working days after the end of each year. The Anti-Corruption Department reviewed, analysed, and summarised provided information, conducted its assessment, and prepared an annual monitoring and assessment report. Before the report was published, opinions of the non-governmental sector were requested and included in the report. The latest Monitoring and Evaluation Report was finalized in 2023. In 2022, two semi-annual monitoring reports and the annual Monitoring and Evaluation Report for 2021 were also prepared.

The extensive Monitoring and Evaluation Report 2022 followed the structure of the strategic documents (see benchmark 1.2.2). The key data sources were self-assessment reports by implementing agencies, international assessments, and information provided by non-governmental stakeholders. The report analysed the implementation of measures and illustrated progress in achieving annual targets. Information on the performance against outcome indicators was provided as requested by **element B**, although the monitoring team notes that it is not often clear to which measure or outcome indicators the narrative report referred. In the final part of the monitoring report, the Anti-Corruption Department summarized the implementation level, briefly noted shortcomings, and made general conclusions and recommendations.

As concerns **element C**, information about expenses for anti-corruption activities implemented by state bodies was available only in the annual state budget reports per individual agencies. The monitoring and evaluation reports did not include information about the budget spent. The monitoring team believes that the lack of information on the funds spent against the implementation level makes it difficult to identify whether the envisaged budget and implementation were accurate, sufficient, or properly utilized.

The Monitoring and Evaluation Report 2022 was published in 2023 (**element D**).[9] The annual Monitoring and Evaluation Report for 2021 and two semi-annual monitoring reports were also available online.[10]

The monitoring team welcomes the introduction of the new monitoring and evaluation mechanism and improving outcome indicators. The produced monitoring reports are overall of good quality and provide implementation details across activities. However, the authorities may also consider further streamlining with reports to illustrate the implementation progress against results (outcome indicators). Besides, considering the low implementation rate (see above benchmark 1.3.1), the monitoring team recommends ensuring that implementation challenges are meaningfully analyzed. Non-governmental stakeholders are of a similar opinion, noting that implementation challenges are not sufficiently explored, and insights into institutional capacities and approaches to implement planned measures shall be reflected better.

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

Element	Compliance
A. An evaluation report is prepared at least at the end of each policy cycle	X
B. An evaluation report is based on impact indicators	X
C. An evaluation report is published online	X

As noted in the Guide complementing the Assessment Framework, the monitoring should assess if the evaluation of the previous policy document has been carried out, and the previous policy document means the policy document for the policy cycle preceding the policy documents in force in the assessment period. For Armenia, the previous policy documents were for 2015-2018. The new Strategy for 2019-2022 included an overview of some gaps in the previous policy documents, and an annual monitoring report for the last year (2018) was elaborated. However, there was no stand-alone evaluation report for the policy documents for 2015-2018; therefore, the country is not compliant with all three elements of the benchmark. At the time of the monitoring visit in April 2023, the Anti-Corruption Department was developing a final evaluation report assessing results and impact achieved by the Strategy and its Action Plan for 2019-2022; this report will be considered in the next assessment of Armenia under the Istanbul Anti-Corruption Action Plan.

[9] ՀԱԿԱԿՈՌՈՒՊՑԻՈՆ ՌԱԶՄԱՎԱՐՈՒԹՅԱՆ եվ դրա իրականացման 2019-2022 ԹՎԱԿԱՆՆԵՐԻ միջոցառումների ԵԶՐԱՓԱԿԻՉ ԳՆԱՀԱՏՄԱՆ ԵՎ ՄՈՆԻԹՈՐԻՆԳԻ ՀԵԿՈՒՅՑ (moj.am).

[10] Anti-Corruption Monitoring and Evaluation 2021 Report - AF Constitution - Library (moj.am) and The Government of Armenia, October 2019, 3, "The Anti-Corruption Strategy of the Republic of Armenia and its implementation 2019-2022 Establishment of the Programme of Activities" by Decision N 1332 on implementation of subordinate activities in 2021 - AF Constitution - Library (moj.am)

Benchmark 1.4.4.

Non-governmental stakeholders are engaged in the monitoring and evaluation:

Element	Compliance
A. Non-governmental stakeholders are invited to regular coordination meetings where the monitoring of the progress of the policy implementation is discussed	✓
B. A monitoring report reflects written contributions of non-governmental stakeholders	✓
C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders	X

Non-governmental stakeholders were represented in the operational level Working Group and the Anti-Corruption Policy Council. The Council included seven representatives from non-governmental organizations, including two representing the business sector, all selected through open competition on a rotation basis. The methodology of the Anti-Corruption Strategy encouraged civil society to carry out monitoring and assessment and submit results to the Ministry of Justice annually. Following the revision of policy documents in 2022, the timeframe for submission of civil society's input to the monitoring report on the progress of implementation was increased from two days to one month. A separate chapter, "Prevention of Corruption and Civil Society Organisations," of the Monitoring and Evaluation Report for 2022 reviewed studies and recommendations from documents developed by civil society.[11] Besides, as reported by the non-governmental stakeholders, the government has been actively supporting the preparation of the Alternative Public Monitoring of the Actions of the 4th Anti-Corruption Strategy.[12] Thus, the country is compliant with both elements A and B. An evaluation report for the 2015-2018 Strategy and Action Plan was not developed (see benchmark 1.4.3); the non-governmental stakeholders could not contribute, and thus, the country is not compliant with **element C**.

The selection of non-governmental organisations in the composition of the Anti-Corruption Policy Council via the open procedure is commendable. The view of the monitoring team on the high level of engagement of civil society in the policy coordination process and monitoring is supported by the stakeholders.

[11] Transparency International Anticorruption Centre's study on "Integrity Institutional System in Public Administration of Armenia," Armenian Lawyers' Association report on alternative monitoring of the annual implementation of the Anti-Corruption Strategy and its Action Plan 2019-2022, and other reports.

[12] For more information see https://armla.am/en/7665.html.

Box 1.1. Good practice – Institutionalisation of focal points' functions

Through the legislative amendments introduced in the Law on Public Service in December 2022, the Government introduced an institute of officials responsible for anti-corruption activities (focal points). Its key purpose is establishing a clear mandate and setting out focal points' responsibilities to ensure effective intra-agency coordination. According to the Law (Article 46.1), a state or local self-government body shall appoint at least one person to coordinate and implement anti-corruption measures. Article 46.2 further specifies the functions of focal points: to support the fulfilment of anti-corruption measures envisaged by strategic documents, provide information and reports, conduct self-evaluation, participate in anti-corruption forums, request and receive information from relevant structural units, request and receive methodological support from coordinating body. The amendments entered into force on 2 January 2023. Thus, the practical implementation is still to be seen; however, this change has a high potential to improve coordination, enhance accountability on an institutional level and contribute to better implementation of anti-corruption strategic documents.

Assessment of non-governmental stakeholders

The interviewed non-governmental organizations (NGOs) believed that the anti-corruption policy development process, stimulated by the increased political support after the Velvet Revolution, was highly inclusive and participatory. The availability of information and uptake of suggestions to the drafts from non-governmental organizations was also positively assessed. NGOs thought that the policy documents reflected a new centralized approach towards anti-corruption institutions, whereas its goals and objectives were set properly. In terms of evidence used, it was noted that the government demonstrated a genuine commitment to considering recommendations of international organizations and worked to improve its representation in international indices. However, the NGOs expressed concerns regarding a lack of systematic evidence collection, including surveys, focus groups, and case studies, to enrich the policy decisions. A few NGOs noted that there was less openness towards incorporating reports presented by local non-governmental actors at the policy design stage. Concerns were also raised in relation to the volume of the used administrative data in the policy documents and insufficient impact indicators.

The NGOs were critical of the amendments to the policy documents made four months before the end of the policy cycle in August 2022. They considered the revision process not to be inclusive, and while the intention to improve indicators was positive, not all changes were clearly explained to the stakeholders.

According to NGOs, the implementation level for anti-corruption policy measures in 2022 was mixed: ''effective in some measures and not in others''. NGOs spoke favourably of the introduction of the new monitoring and evaluation mechanism and improvement of outcome indicators. However, they believed that monitoring reports did not thoroughly analyse the implementation challenges and did not offer in-depth insights into institutional capacities and approaches to implement planned measures. Stakeholders suggested that more efforts are needed to draw lessons from the lack of implementation and better understand real achievements and effectiveness of the measures throughout the monitoring process. Besides, authorities were advised to increase transparency and availability of data on the implementation among responsible institutions.

NGOs pointed to an evident increase in the quality of coordination, frequency of communication between the stakeholders, and the work of the Anti-Corruption Department. Concerns were expressed regarding the lack of activities in the Anti-Corruption Policy Council and the Anti-Corruption Working Group in 2022. Stakeholders highlighted frequent leadership and staff turnover changes in the Ministry of Justice during the last few years. They noted that these changes significantly affected the work of the dedicated

department. NGOs believed that it lacked support and political backing to push the implementation forward. It was suggested to move the respective functions back to the Prime Minister's Office, thereby increasing ownership over the commitments, especially among independent public agencies.

2 Conflict of interest and asset declarations

In 2022, Armenia introduced significant changes in the legal framework on the management of conflict of interest (COI) to align it with international standards. The enactment of the amendments was outside the assessment period and did not impact compliance. Despite the amendments, there was still no harmonized framework of consistent COI rules for different categories of public officials. Certain provisions lacked legal certainty. The enforcement of COI rules remained a challenge, with little tangible progress achieved in 2022. Insufficient capacities of relevant institutions in the decentralized system impeded the consistent enforcement of integrity rules. Armenia had an advanced legal framework for asset declarations with a wide coverage of public officials and a broad content of disclosure. Members of management or supervisory bodies of SOEs were not covered though. The online declaration system was accessible to the public, and the scope of restricted data was limited. An automated cross-check and risk-based analysis mechanism was being developed. Verification of asset and interest declarations and routine application of administrative sanctions was ensured in practice. Significant progress in setting up the Corruption Prevention Commission was commendable, although the agency significantly lacked human and operational resources.

Figure 2.1. Performance level for Conflict of Interest and Asset Declaration is average

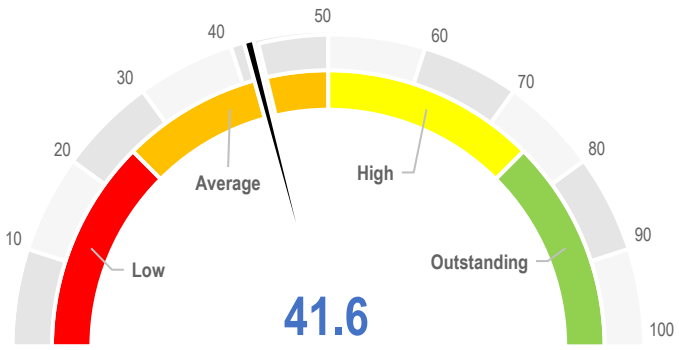
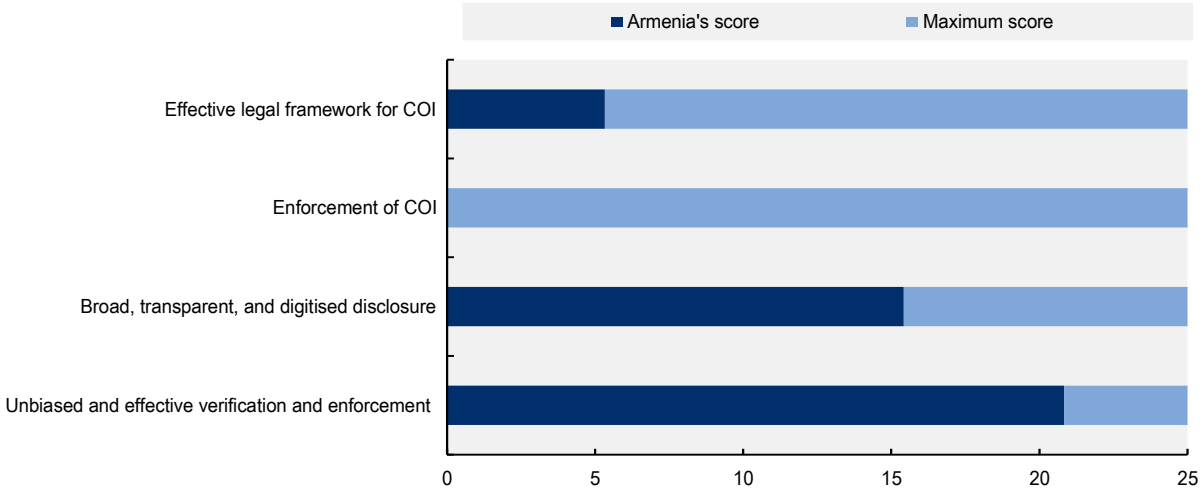


Figure 2.2. Performance level for Conflict of Interest and Asset Declaration by indicators



Indicator 2.1. An effective legal framework for managing conflict of interest is in place

Background

The Law on Public Service of Armenia (LPS) establishes the overall framework for preventing, reporting, and resolving conflict of interest (COI) in public service. The COI definition and responsibilities for preventing and managing conflict of interests are provided in Article 33 of the LPS. These responsibilities are assigned to a public official, to his/her supervisor, and a dedicated agency - Corruption Prevention Commission. The special COI provisions targeting officials without superiors, as well as judges, prosecutors, and members of the parliament, were in place.

Assessment of compliance

In the reporting period, Article 33 of the LPS defined the COI in a narrow way, and no apparent or potential COI was covered. The legislation explicitly obliged an official to report ad hoc COI through a written statement and abstain from decision-making until the COI was resolved, although the provisions did not foresee a duty of a manager to resolve COI when detected from sources other than self-reporting by a public official. The listed methods for resolving emerged COI were insufficient to assist in effectively managing conflict situations. A revision of the national legislation in 2022, including the LPS, significantly improved provisions for preventing and managing conflict of interest. The amendments included an expanded concept of conflict of interest and the scope of affiliated persons as well as a new definition of ''private interests''. A range of clearly defined conflict-of-interest (COI) resolution methods was introduced. The amendments were adopted in December 2022 and entered into force on 2 January 2023 and, therefore, technically fall outside the assessment period.

Benchmark 2.1.1.

The legislation extends to and includes a definition of the following concepts applicable to public officials, in line with international standards:

Element	Compliance
A. Actual and potential conflict of interest	X
B. Private interests that include any pecuniary and non-pecuniary advantage to the official, his or her family, close relatives, friends, other persons, or organisations with whom the official has personal, political, or other associations	X
C. An apparent conflict of interest	X

In the assessment period, a COI definition was narrowly formulated in the LPS and did not include an apparent and a potential conflict of interest. Particularly, according to Article 33 (paragraph 1) ''a conflict of interest is a situation where a person holding a position, while exercising his or her powers, performs an action or adopts a decision that can reasonably be interpreted as conduct motivated by his or her personal interests or personal interests of a person affiliated with him or her''. The second paragraph of the Article interpreted ''a conduct motivated by his or her personal interests or personal interests of a person affiliated with him or her'' as ''performance of an action or adoption of a decision which leads or contributes to or may reasonably lead or contribute to'' the circumstances defined by the law (listed in Article 33, paragraph 2(1-4)), The monitoring team believes that the Article 33 implies the existence of an actual actions/decision which then can lead to COI; therefore potential COI was not provided by the legislation. A similar assessment was provided in the Pilot Monitoring Report of Armenia, which was supported by the reference to the government's position on the narrow definition of the COI.[13] Thus, the country is not compliant with **element A**.

The authorities expanded the legislation on preventing and managing COI in 2022. According to the amended Article 33 of the LPS, COI is now defined as a situation where the private interests of a person holding a position influence or may influence the unbiased and objective performance of official duties. The amendments seem to encompass actual and potential COI. However, the monitoring team did not assess the amended provisions as they entered into force after the assessment period on 2 January 2023.

[13] OECD/ACN (2022), Pilot 5th Round of Monitoring Report on Armenia, 2022, pages 34-35, www.oecd.org/corruption/anti-bribery/corruption/acn/anti-corruption-reforms-in-armenia-e56cafa9-en.htm.

As concerns **element B**, in 2022, the definition of ‘’private interests’’ was limited to an improvement of property or legal status of an official or a person affiliated with him/her, as well as an improvement of property or legal status for a non-commercial entity where an official or his/her affiliated person are members or similar benefit for a commercial organization where an official or his/her affiliated person are ‘’participators’’. The definition also covered the appointment of an affiliated person to a position. Following the amendments, its scope was expanded to incorporate ‘’any privilege’’ to an official or an affiliated person as well as persons or organizations with which an official or affiliated persons have business, political, and other practical or private relations (Article 33, part 2). The new provision further unfolds the terms ‘’business relations’’ and ‘political relations’’. The former includes any economic, business, or transitional relations, whereas the latter covers relations arising out of membership in a party or other business or personal connections with members of that party.

Similarly, in 2022, the LPS defined “affiliated persons” only as a spouse, children, parents and grandparents, uncles, aunts, and their children, sisters and brothers, and their spouses and children. After the amendments, Article 33 encompasses all persons tied with kinship and non-kin close personal relations with a public official, including persons living together and organizations where direct or indirect control of a public official or his/her affiliated persons exists. As noted, amendments entered into force on 2 January 2023 and cannot impact compliance with **element B** in this report.

Both before and after the December 2022 amendments, the legislation of Armenia did not cover an apparent COI as required by **element C**. Moreover, in 2022, the LPS had a provision that clearly excluded an apparent COI by stating that ‘’there is no conflict of interest if the personal interest has an apparent influence on the proper exercise of the powers of the person holding the position, which is actually absent’’ (Article 33, paragraph 4). The authorities mentioned that the revised paragraph 6 of Article 33 currently indirectly covers an apparent COI by providing that, on the basis of examination of the official’s written statement, the official's superior/direct supervisor or the CPC may suggest him/her to “continue or resume the unbiased and objective performance of duties in the case of absence of the conflict of interests’’. These legislative amendments cannot be taken into consideration by the present assessment since they entered into force in 2023. Nonetheless, the monitoring team believes that the definition of the COI shall extend to an apparent COI by explicitly mentioning it the COI definition, and thus, at this stage, the country is not compliant with **element C**.

While the monitoring team welcomes the legislative changes that bring the normative framework closer to international standards, including the revised definition of COI and an expanded scope of private interests, the compliance of new provisions with the benchmark cannot be assessed by this report but will be reviewed in the following monitoring report. NGOs also believed that the authorities should continue addressing remaining deficits or inconsistencies in the LPS and legal acts establishing COI norms for different categories of public officials.

The authorities noted that although no guidelines for managing conflict of interest have been developed separately, in 2021, the CPC approved the model rules of conduct of public servants, and in 2022, developed the manual guideline for interpretations of these rules. Furthermore, the conflict of interest rules are also provided in the Code of Conduct of Persons Holding State Positions, which, at the time of monitoring, were in the discussion phase and planned to be approved soon. According to the CPC, adopting the Code will also be followed by developing the guidelines/manual for interpretations of the rules.

Benchmark 2.1.2.

The legislation assigns the following roles and responsibilities for preventing and managing ad hoc conflict of interest:

Element	Compliance
A. Duty of an official to report COI that emerged or may emerge	✓
B. Duty of an official to abstain from decision-making until the COI is resolved	✓
C. Duties of the managers and dedicated bodies/units to resolve COI reported or detected through other means	X

The duties of an official to report emerged COI (**element A**) and abstain from decision-making until it is resolved (**element B**) are established by the legislation. Namely, Article 33 of the LPS assigns a duty to prevent and manage conflict of interest to a public official, his/her superior or immediate supervisor, or the CPC. It stipulates that an official must submit a written statement on the circumstances related to COI to his/her superior or immediate supervisor in case circumstances can lead to COI during the performance of an action or adoption of a decision. The statement shall be reviewed immediately. The amendments of December 2022 specified a timeframe within which the written statement shall be submitted (10 days), thereby clarifying the disclosure procedure. When a public official does not have a superior or an immediate supervisor, a written statement shall be submitted to the CPC. The law does not define a deadline for reporting COI to the CPC for an official without a superior.

A duty to abstain from action and decision-making (**element B**) is foreseen by part 5 of Article 33 of the LPS. After the amendments in 2022, the scope of this obligation was extended to include preparatory works aimed at decision-making, such as drafting documents, organizing discussions, and forming task forces that influence the decision-making process.

The LPS (Article 33, part 5), in force until 31 December 2022, provided an obligation of the superior or immediate supervisor of the public official who submitted a written statement to take steps or suggest taking steps to resolve the COI situation. An obligation to “suggest taking steps” to resolve the situation was also provided for the CPC in case the person submitting a written statement did not have a superior or immediate supervisor. However, the monitoring team also notes with regret that neither the previous version of the LPS nor its new provisions explicitly indicate a manager's duty to resolve COI in cases when COI was detected from sources other than self-reporting by a public official. Thus, the country is not compliant with **element C**.

As noted by the government, COI situations are also investigated based on media reports in addition to self-reporting. Particularly when a person does not report an incident/situation to a supervisor or the CPC but it becomes known through media coverage.

In addition to the responsibilities of superiors and CPC, Articles 44-46 of the LPS also empower ethics commissions and integrity officers (‘’integrity affairs organizers’’) in state and local self-governance bodies to study and address situations of COI. The ethics commission’s duties are: i) to examine and address applications on violations of incompatibility provisions, other limitations, rules of conduct by public servants, and applications on conflict of interest; ii) issue an opinion or submit recommendations to an authorized body or a public official on prevention and elimination of violations of incompatibility provisions, other limitations, rules of conduct, and prevention and elimination of COI situations. Integrity officers consult public servants on incompatibility provisions, other limitations, COI-related issues, and rules of conduct.

The CPC is the main body responsible for the prevention and management of COI regulations among persons holding state positions (except for members of the Parliament (Deputies), judges, members of the

Supreme Judicial Council, prosecutors, and investigators), heads and deputy heads of communities, heads and deputy heads of administrative districts of the community of Yerevan. The CPC may act based on a written statement but also based on publications in media or in case of detecting prima facie violations or analyzing declarations (Article 27, Law on Corruption Prevention Commission).

Benchmark 2.1.3.

The legislation provides for the following methods of resolving ad hoc conflict of interest:

Element	Compliance
A. Divestment or liquidation of the asset-related interest by the public official	X
B. Resignation of the public official from the conflicting private-capacity position or function, or removal of private interest in another way	X
C. Recusal of the public official from involvement in an affected decision-making process	X
D. Restriction of the affected public official's access to particular information	X
E. Transfer of the public official to duty in a non-conflicting position	X
F. Re-arrangement of the public official's duties and responsibilities	X
G. Performance of duties under external supervision	X
H. Resignation/dismissal of the public official from their public office	X

The methods of resolving ad hoc conflict of interest foreseen by the LPS did not comply with any of the elements (**elements A-H**) listed in the benchmark. In the assessment period, the LPS contained only a general requirement to ‘’take steps or suggest taking steps to resolve the situation by a supervisor’’ and to assign the power to consider and solve the matter concerned to another person holding a position. Divestment of asset-related interests by a public official was covered by LPS Article 31 on incompatibilities, although the benchmark 2.1.3 concerns only ad hoc COI and does not cover incompatibilities and other situations resolved through various restrictions. Thus, the monitoring team concludes that no other resolution methods applicable to different COI situations and listed in the benchmark were explicitly mentioned in Article 33 in the reporting period.

As of 2 January 2023, Article 33 (part 6) lists specific measures to be taken by a supervisor following a written statement by an official. The measures include restricting the access of the official to certain information; assigning the power to consider and solve the matter concerned to another official if it is not prohibited by law; setting a deadline for eliminating COI upon the consent of the official; restricting powers or scope of discretion of the official in the given case; refraining from making a decision in collegial bodies, unless otherwise provided by the law regulating the relevant relation; continuing or resuming official duties in the absence of COI. Although this analysis will not be reflected in the rating for this report, the monitoring team observes that among the benchmark’s elements, transferring a public official to duty in a non-conflicting position, performing duties under external supervision, and resignation/dismissal of the public official seem to be missing in the revised legislation. Setting a deadline for eliminating COI may cover elements A-C of the benchmark, although it would need additional clarification.

Benchmark 2.1.4.

The legislation provides for the following methods of resolving ad hoc conflict of interest:

Element	Compliance
A. Specific methods for resolving conflict of interest in the collegiate (collective) state bodies	x
B. Specific methods for resolving conflict of interest for top officials who have no direct superiors	x

As noted above, in 2022, the LPS applied to all persons holding state positions (except for Deputies, judges, members of the Supreme Judicial Council, prosecutors, and investigators), heads or deputy heads of communities, a head or deputy heads of the administrative district of the community of Yerevan, and public servants. In 2022, the LPS did not provide for any specific methods of resolving COI in the collegiate state bodies: relevant provisions were included in some of the legislative acts regulating specific collegiate bodies (for example, the Supreme Judicial Council or the Corruption Prevention Commission[14]), but not all collegiate (collective) bodies were covered by the specific provisions.

Authorities noted that persons having no superior or immediate supervisor or persons holding a state position submit a written statement to the Corruption Prevention Commission in the case provided for by the LPS (Article 33, part 7). However, the benchmark requires the legislation to either contain general rules applicable to *specific* situations in collective bodies or provide specific rules for each collective body without a direct superior. Following the amendments of 2 January 2023, Article 33 (part 6) introduced a list of COI resolution measures to be taken by a public servant's supervisor/superior, including refraining from making a decision in collegial bodies unless otherwise provided by the special law (see benchmark 2.1.3). This provision, however, only concerns situations when the member of the collegiate body has a supervisor/superior, which is not always the case in collegiate state bodies, which operate independently. In any way, the 2022 amendment to the LPS was outside the assessment period. Therefore, the legislation is not aligned with **element A**.

Article 33 of the LPS refers to a general rule for managing COI among public officials without supervisors or those holding political offices (e.g., President, Prime Minister, government members, heads of autonomous bodies). In this case, these officials shall submit a written statement to the CPC that suggests taking steps to resolve the situation, including making a statement on the presence of COI or its absence. Following the publication of an opinion of the CPC on its official website within three days, an official shall submit a public clarification and publish it on the website of a respective agency within three days. The Code of Administrative Violations foreseen the responsibility for violation of COI regulations. Particularly, Article 169.31 (1) foresees a fine for not submitting a written statement about the circumstances related to COI to the CPC by a person who does not have a superior or direct manager or holds a political position. Part 2 of Article 169.31 also establishes responsibility for taking an action (inaction) or taking a decision in a situation of conflict of interest by a person who does not have a superior or direct manager or holds a political position receiving the recommendation of the Corruption Prevention Commission regarding the circumstances of the conflict of interest. However, the LPS law does not explicitly define any specific methods to resolve COI that the CPC could take within its mandate other than making a statement. At the same time, Article 33 (part 6) of the LPS, in force since 2 January 2023, does not seem to address this issue either since it only refers to the measures available to the superior/supervisor. Thus, the regulations

[14] According to Article 21 of the Law on Corruption Prevention Commission, "…The member of the Commission to whom the discussed question refers does not take part in the voting.''

are not compliant with **element B** either. The monitoring team recommends that authorities ensure that a clear and broad range of appropriate COI resolution measures for both members of the collegiate and officials without supervisors and those holding political offices are provided in the law.

Benchmark 2.1.5.

There are special conflict of interest regulations or official guidelines for:

Element	Compliance
A. Judges	✓
B. Prosecutors	X
C. Members of Parliament	✓
D. Members of Government	X
E. Members of local and regional representative bodies (councils)	X

To assess compliance with benchmark 2.1.5, the monitoring team checked the availability of special rules adjusted to the listed categories of officials and did not analyze the provisions for each group in detail but checked that the special regulations or guidelines provided for meaningful special rules/recommendations adjusted to the relevant categories of officials and COI situations that may arise in their work. It will not be sufficient if the special regulations or guidelines duplicate the general legislative provisions on COI management.

In 2022, Article 33 of the LPS did not apply to members of parliament (Deputies of the National Assembly (NA)), judges, members of the Supreme Judicial Council, prosecutors, and investigators, as well as members of community councils (considered as state positions) and administrative heads of the settlements included in the multi-settlement community (considered as administrative positions) as well as discretionary positions.

Judges (element A): The Judicial Code and Law on the Constitutional Court regulate the COI of judges. Pursuant to Article 70 (part 2, point 7) of the Judicial Code, a judge shall avoid COI and exclude any ‘’impact of family, societal relationships, or relationships of another nature in the implementation of his/her official powers’’. No additional clarification of the terms ‘’family’’ or ‘’societal relationships’’ and COI is provided. Since 2 January 2023, provisions of Article 33 of the LPS (parts 1-5, 11) on the definition of COI and private interests, a duty to report COI and abstain from action (inaction), decision-making and preparation for decision-making, is applicable to judges too.

Article 71 of the Judicial Code lists grounds for recusal, particularly when a judge is aware of circumstances that may raise a reasonable doubt about his/her impartiality in a case. In this case, a judge shall disclose grounds of recusal to parties and act based on the decision thereof. Similarly, judges of the Constitutional Court shall also avoid COI and prevent any impact of family, public or other relations on the exercise of official duties (Article 14, Law on Constitutional Court). Self-recusal of a judge of the Constitutional Court shall be made based on the grounds defined by the Judicial Code. Procedures for self-recusal are defined by Article 29 of the Law Constitutional Court. Besides, decision No 05-1 of the General Assembly of Judges defined special rules on COI, such as an obligation to be informed of financial activities and the interests of his or her family members, avoid incompatibilities and reasonable doubts in her/her impartiality during non-judicial activities. Thus, the country is compliant with element A.

Prosecutors (element B): The Law on Prosecution and Order No. 27 of the Prosecutor General provided a narrow scope of COI, and provisions in both legal acts were mostly of declaratory nature. Particularly, Article 72 (part 1, point 6) of the Law on Prosecution states that “the prosecutor is obliged to be autonomous

and unbiased, be independent of the influence of … private interests, public opinion, and other indirect influences''. According to Article 73 (point 1, part 10), a prosecutor shall be impartial, abstain from manifesting biases, discrimination, or creating such appearance, and act in a way that will not create unnecessary doubts regarding his/her impartiality). Article 74 of the Law on Prosecution obliged a prosecutor not to allow a conflict of interest when his family, societal, or relationships of other nature would impact the proper performance of duties. The monitoring team believes that the mentioned legal acts did not define the concepts of COI or private interests, and the means for resolving COI were not explicitly defined. The Law on Prosecution makes, either directly or indirectly, references to the obligations of recusal or self-recusal of the prosecutor (Article 32, point 7 part (2) and point 8, part (2), as well as Article 73, point 1, part 11) as a rule of conduct. However, unlike the Judicial Code, the Law on Prosecution does not provide for the grounds for recusal or self-recusal and the procedure to follow. Thus, the authorities are not compliant with element B. Since January 2023, Article 33 of the LPS applies to prosecutors, and an explicit obligation to immediately inform the Prosecutor General about emerged COI was introduced to Article 74.1 of the Law on the Prosecution.

Members of Parliament (element C): COI among members of the parliament (MPs) is regulated by the Law on Rules of the National Assembly and Law on the Performance Guarantees of the National Assembly Members. Particularly, an MP shall not be impacted by his/her or affiliated persons' private interests, which lead, contribute, or may reasonably contribute to COI. The definition of private interest is limited to the improvement of property or legal status of his/her property or affiliated persons; improvement of property or legal status of non-profit or commercial organizations to which MP or affiliated persons are members; appointment to the office of an affiliated person. When ad hoc COI arises, an MP shall make a statement prior to speech or voting at a sitting of the National Assembly or a Committee in which the MP is a member. When making a legislative initiative and submitting a draft resolution, statement, or proposal, an MP shall submit a written statement describing the nature of the conflict. The regulations cover only the duty of an MP to abstain from voting at the sitting of the National Assembly or the Committee, and other actions and situations not involving decision-making are not covered. The Law lacks clarity on sanctions applicable to COI situations and management of emerged COI. Despite the mentioned deficiencies, the country is compliant with the key aspects required by element C. At the time of the onsite visit, the COI-related concepts applicable to MPs were not aligned with the amendments of the LPS enacted in 2023.

Members of Government (element D): There are no special COI regulations for Government members except for general provisions of the LPS, so authorities are not compliant.

Members of local and regional representative bodies (element E): Members of community councils are subject to the Law on Self-Governance and Law on Self-Governance of Yerevan. Both acts include only a few provisions obliging a member of the council to restrain from participation in the decision-making process when it is related to him/her, his close relatives, or in-laws (parent, spouse, child, brother, sister). A similar regulation was applicable to members of the community council in Yerevan city. Following the recent amendments of the LPS, the definition of the COI in Article 33 also applies to the members of community councils (Article 21.1, Law on Local Self-Government). In case of actual COI, a member of the community council is obliged to immediately inform the council or the head of the community in writing. The monitoring team concludes that these legal acts do not provide details on the COI management and applicable sanctions, and it is not clear if other provisions of the LPS apply to this group. Considering this assessment, the country is not compliant with element E.

Non-governmental representatives believed that the COI regulations for Government members, officials of autonomous bodies, members of community councils, and officials of other collegial bodies were not adapted to Armenian realities. They also mentioned inconsistencies and a lack of practical COI management tools and sanctions in place for members of the parliament and local governance bodies.

Indicator 2.2. Regulations on conflict of interest are properly enforced

Background

Disciplinary sanction for ''an action or making a decision in a situation of conflict of interest'' was foreseen by Article 33 (part 9) of the LPS. Provisions on disciplinary liability were not applicable to persons holding political positions, and persons holding autonomous positions were subject to disciplinary liability only in cases provided for by law.

Assessment of compliance

Enforcement of COI regulations was weak during the assessment period. The Corruption Prevention Commission initiated a few proceedings for violating the incompatibility requirements by a public official and against high-level officials for violation of COI rules, although no sanctions were imposed in 2022. The authorities did not provide information on the cases of detecting and effectively responding to COI-related violations among other public servants. In 2022, the legal framework did not establish measures for revoking decisions or contracts due to violation of COI regulations and suspension/termination of employment or other contracts for violating post-employment restrictions.

Benchmark 2.2.1.

Sanctions are routinely imposed on public officials for the following violations:

Element	Compliance
A. Failure to report an ad hoc conflict of interest	X
B. Failure to resolve an ad hoc conflict of interest	X
C. Violation of restrictions related to gifts or hospitality	X
D. Violation of incompatibilities	X
E. Violation of post-employment restrictions	X

In 2022, no cases of a failure to report an ad hoc COI among public officials were detected or sanctioned, leading to non-compliance with **element A**. Authorities noted that while the LPS obliged persons without a superior or direct manager or those holding a political position to report to the CPC on a COI situation, there were no measures of responsibility for violating this requirement and tools for their enforcement in the assessment period. Since January 2023, the Code on Administrative Violations (Article 169.31) established sanctions for a public official without a superior for a failure to submit a written statement to the CPC on circumstances related to COI, taking actions (inaction), or deciding before receiving a recommendation from the CPC and acting contrary to the recommendation. However, Article 169.31 of the Code on Administrative Violations does not apply to public officials with superiors.

Non-compliance was established concerning **element B** as well, as the legislation did not explicitly establish sanctions for violating a duty to resolve COI, and accordingly, there were no sanctions for this type of violation in 2022.

Similarly, the amendments that established regulations on the registry of gifts (Articles 29 and 30 of the LPS) and introduced administrative liability for violation of rules on the acceptance of gifts or procedures for their registration in the Code on Administrative Violations (Article 166[1]) entered into force only in January 2023. Therefore, there were no sanctions for violations related to gifts or hospitality in 2022, as required by **element C**.

Article 31 of the LPS foresees responsibility for violating the incompatibility requirements by a public official through termination of powers or removal from office. As reported by the authorities, in 2022, the CPC initiated nine proceedings, including against MPs, regional governors, and a deputy mayor, concerning the violation of incompatibilities. Authorities noted that out of the nine cases of the alleged violation of incompatibility requirements, six cases against Deputies were concluded in the first half of 2023 with the adoption of a decision on the absence of violation of incompatibility requirements, one case was concluded in 2023 with the decision of violation of incompatibility requirements, and two cases were suspended at the beginning of 2023, with the case materials sent to the RA General Prosecutor's Office. No sanctions were imposed in the assessment period, and the country is not compliant with the requirement of the element. According to Article 32 (part 1, point 6) of the LPS, "employment in or becoming an employer of an organization where a public official used to exercise direct control during the last year in the office'' entails disciplinary sanctions. However, in the assessment period, no sanctions were applied against public officials for violations of post-employment restrictions (**element E**).

The monitoring team welcomes the introduction of administrative responsibility for COI violations by officials without supervisors and new rules for accepting gifts. However, these provisions should be extended to other officials. Overall, the monitoring team believes that while the sanctions under the new provisions have not yet been enforced, in cases where the legislation was in place in 2022, a lack of sanctions signals deficiencies in the oversight and enforcement system (see also benchmark 2.2.2).

Non-governmental stakeholders shared the monitoring team's opinion and noted that provisions on registering, analyzing, and verifying oral and written COI statements should be further improved. The stakeholders noted that detailed guidelines on the management of COI and in-depth studies of the practical implementation of the COI regulations were critical.

Benchmark 2.2.2.

Sanctions are routinely imposed on high-level officials for the following violations:

Element	Compliance
A. Violation of legislation on prevention and resolution of ad hoc conflict of interest	X
B. Violation of restrictions related to gifts or hospitality	X
C. Violation of incompatibilities	X
D. Violations related to requirements of divesting ownership rights in commercial entities or other business interests	X
E. Violation of post-employment restrictions	X

The authorities were not compliant with any of the **elements A-E** of the benchmark, as no sanctions were imposed against high-level officials for the listed violations in 2022. The government provided information on the following relevant cases, which were pending at the time of the monitoring:

1. In December 2022, the CPC initiated proceedings against a regional governor in a case related to the appointment of an affiliated person to the board of a state non-commercial organization. The CPC made a decision on the presence of a conflict of interests in the case on 5 April 2023.[15]
2. One case concerned a head of the community who was reported to have shares in a commercial organization to which a public contract was awarded for AMD 537 million. During proceedings, the CPC detected violations of procurement procedures and sent materials to the General

[15] 994.pdf (cpcarmenia.am).

Prosecutor's Office. The mentioned proceedings were suspended by the CPC on 9 December 2022 and sent to the Prosecutor General's Office.

3. In 2022, the CPC initiated six proceedings against Members of the Parliament for alleged violation of requirements of divesting ownership rights in commercial entities or other business interests. All proceedings were completed in the first half of 2023. According to the authorities, in three cases, it was established that the officials did transfer their shares in commercial organizations to trust management within the prescribed period. In three other cases, the failure to transfer the shares took place, although no violations were recorded by the Commission as it was established that commercial organizations did not carry out actual activities and did not generate profit.
4. In December 2022, the CPC initiated proceedings against the Deputy Mayor with respect to prima facie violation of the incompatibility requirement, who was holding the position of the chairman of the board of directors of the closed joint-stock company. The proceedings were suspended, and the materials were forwarded to the General Prosecutor's Office.

Besides, concerning the prohibition of gifts, the authorities specified that in 2022, due to the legislative gaps, the CPC could not effectively respond to the violations of the restrictions on accepting gifts or apply relevant sanctions. Following the enactment of legislative amendments on 2 January 2023, the regulations on accepting gifts were reviewed, and administrative liability for violating the restrictions on accepting gifts was established by Article 166.1 of the Code on Administrative Offences. As noted, in 2023, the CPC conducted three administrative proceedings for violating the restrictions on accepting gifts.

Benchmark 2.2.3.

The following measures are routinely applied:

Element	Compliance
A. Invalidated decisions or contracts as a result of a violation of conflict-of-interest regulations	X
B. Confiscated illegal gifts or their value	X
C. Revoked employment or other contracts of former public officials concluded in violation of post-employment restrictions	X

The legislation does not foresee mechanisms for revoking decisions or contracts due to violation of COI regulations, termination of employment, or other contracts concluded in violation of post-employment restrictions. There were also no provisions on the confiscation of illegal gifts or their value in the reporting period. Accordingly, no measures were applied in line with the benchmark 2.2.3 in 2022.

Indicator 2.3. Asset and interest declarations apply to high corruption risk public officials, have a broad scope, and are transparent for the public and digitized

Background

The LPS and respective Decrees regulate public officials' asset and interest disclosure system. Declarations are submitted on an annual basis, also upon entry into public functions and departure from office. The Corruption Prevention Commission can also request the submission of a situational declaration. The LPS defines a list of public officials subject to the submission of declarations and the coverage of information to be disclosed. The asset and interest disclosure also includes information on family members. The declaration forms and rules for submission are in place.

Assessment of compliance

Armenia has a robust declaration system with a detailed regulatory framework. The scope of officials is clearly defined and includes high-ranking elected and non-elected officials; however, members of management or supervisory bodies of state-owned organizations and non-judicial members of judicial governance bodies were not covered. The coverage of disclosed information is broad and includes Immovable property, income, shares in companies, securities, bank accounts, and membership in organizations. However, a few gaps in terms of disclosure still remain. All declarations filed through an online platform are accessible, although the asset declaration system should be strengthened by automatic cross-checking with relevant government databases and providing data in a machine-readable format.

Benchmark 2.3.1.

The following officials are required to declare their assets and interests annually:

Element	Compliance
A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies	✓
B. Members of collegiate central public authorities, including independent market regulators and supervisory authorities	✓
C. Head and members of the board of the national bank, supreme audit institution	✓
D. The staff of private offices of political officials (such as advisors and assistants)	✓
E. Regional governors, mayors of cities	✓
F. Judges of general courts, judges of the constitutional court, members of the judicial governance bodies	x
G. Prosecutors, members of the prosecutorial governance bodies	✓
H. Top executives of SOEs	x

The scope of declarants defined by Article 34 of the LPS is broad and covers almost all officials listed in the benchmarks. Namely, it includes the President, members of Parliament, members of government, and their deputies; also heads, deputies, and members of independent state and autonomous bodies, among them the Central Election Commission, the Audit Chamber, and the Central Bank. The regulation also covers market regulators such as the Public Service Regulatory Commission and Television and Radio Commission (chairmen, deputies, and board members). The staff of private offices (advisor, press secretary, assistant) of state political officials also submits declarations on property, income, and expenses. On the local level, heads (mayors) and deputy heads of communities, secretaries of personnel of municipalities, members of the community council with a population of more than 15,000, and heads and deputy heads of the administrative district of Yerevan are subject to declaration requirements. Regional governors (Marz governors) are covered by Article 34 of the LPS too (**elements A-E**).

The Prosecutor General and prosecutors are required to file declarations. There are no prosecutorial governance bodies in Armenia according to the definition used for the monitoring (**element G**).

As regards the judiciary branch (**element F**), all judges and judicial members within the Supreme Judicial Council, the Ethics and Disciplinary Commission, the Training Commission, and the Commission for Performance Evaluation of Judges submit their annual declarations (Judicial Code, Article 69, point 15 and LPS Article 34). Authorities noted that persons holding positions in the first and second sub-groups of managerial positions of civil service and persons holding chief positions in the judicial acts compulsory

enforcement service are obliged to submit a declaration under part 1 of Article 34 of the LPS. However, neither the LPS nor the Judicial Code obliges non-judicial members of these judicial governance bodies (who are not civil servants) to submit a declaration of assets and interests.

In 2022, heads, deputy heads, or members of the executive bodies of state-owned enterprises (SOEs) were not obliged to declare assets. Authorities noted that the 2022 amendments to the LPS broadened the scope of declarants. Particularly, heads of executive bodies (members of the collegial executive body) of state and community non-commercial organizations, foundations established by the state, and the heads of the executive bodies of the commercial organizations with 50% or more of state or community participation were added. The amendment will enter into force in January 2024. Besides, these officials will submit declarations only upon the demand of CPC, which is not in line with the requirement of **element H** of the benchmark.

Benchmark 2.3.2.

The legislation or official guidelines require the disclosure in the declarations of the following items:

Element	Compliance
A. Immovable property, vehicles and other movable assets located domestically or abroad	X
B. Income, including its source	✓
C. Gifts including in-kind gifts and payment for services and indicating the gift's source	X
D. Shares in companies, securities	✓
E. Bank accounts	✓
F. Cash inside and outside of financial institutions, personal loans given	✓
G. Financial liabilities, including private loans	✓
H. Outside employment or activity (paid or unpaid)	X
I. Membership in organizations or their bodies	✓

The coverage of disclosed information is also broad and includes most elements listed in the benchmark. Immovable property, vehicles, and any other valuable property (not listed in points 1-5 of Article 40) that exceeds AMD 4 million shall be declared in the property declaration (**element A**).[16] The Guidelines approved by the CPC Decision (N-04-L) specify that if the property is located in foreign countries, relevant identification data shall be provided, and authorities provided relevant examples of declaring this type of property and noted about ongoing cases on a failure to declare immovable property. However, there is no such clarification or explicit requirement on declaring vehicles and other movable assets located abroad, neither in the Guidelines nor in the declaration form or relevant decisions referring to this obligation. Moreover, in relation to vehicles, the Guidelines seem to limit the ''date of acquisition'' to the vehicle registration date in the state-authorized body of Armenia. The authorities are encouraged to explicitly stipulate this requirement for vehicles and other movable assets in the LPS or official guidelines.

A declaration of income (**element B**) establishes an obligation to declare an income together with its source (Article 41) – a person who paid a declarant that was received in a national or foreign currency or an in-kind contribution. The information about income sources includes the name and address of a natural or

[16] http://cpcarmenia.am/files/legislation/352.pdf.

legal person, the country where the income was paid, as well as their nature of the relation. An official shall also specify a sum, currency, and type of income. Income is defined as remuneration for work or other payment, received loans or credits, interest, and other compensation received in return to provided loans, dividends, income generated from agriculture activities, contracts, property rights, entrepreneurial activities, as well as monetary funds or property received as a gift. Thus, the legislation is compliant with **element B**.

Gifts are declared as a part of the income; therefore, their source, amount, and other details noted above (see above) are included in the declaration form. However, the form covers only property or monetary funds received as a gift; in-kind gifts received in the form of work or service are excluded (Article 41 of the LPS, part 4, point 8), so the authorities are not compliant with **element C**. At the same time, Article 29 of the LPS defines the scope of gift more broadly and includes, inter alia, services rendered or work carried out without compensation as well as free-of-charge use of another's property and other actions as a result of which an official receives benefit or advantage.

As concerns **element D** requirements, shares and other types of investment in companies are also declarable items. The following details shall be included in a property declaration form[17] – a company name, a type of equity or investment, a date and a method of acquisition, names and addresses of other parties to the transaction and their relation, a total value, and a currency of stock as well as a percentage of shareholding at the beginning and end of the year. Similarly, bank deposits are covered by a property declaration form, particularly the name and location of local and foreign banks where the deposit was made, currency, and the total amount of deposit at the beginning and end of the year. Savings and all other bank accounts are also disclosed as required by **element E** (parts B 4.3. and B 6.1. of the property declaration form). Besides, monetary funds, including funds available in the bank or electronic accounts and personal loans, are declared. Article 41 requires a declarant to declare existing loans and borrowings through the income declaration form, which covers the lender's name and address, the amount, currency, interest rates, purpose, etc. Thus, the authorities are compliant with **elements D, E, F and G**.

In terms of disclosure of outside employment and activities, all paid activities are covered by the declaration of income, although no explicit provision requires a declaration of all unpaid activities. The authorities noted that unpaid or voluntary membership or involvement mostly refers to non-governmental organisations with non-commercial status and are subject to declaration under domestic law. From their point of view, involvement and membership in political parties, which is subject to declaration, is the most important and risky. The authorities also noted that at the end of each section of the declaration, there is a section - "Additional information", which enables the declarant to fill in all the information and data for which there are no separate subsections. The monitoring team believes that, in a declaration of interest, the membership and involvement in governing, administrative or supervisory bodies of commercial, non-commercial organizations or political parties are being declared (Article 42), and the declaration allows a declarant to provide additional information; however, other forms of voluntary activity for various organisations are still not covered by the legislation explicitly, and thus, not fully in line with **element H** of the benchmark.

As noted above, membership and involvement in governing, administrative, or supervisory bodies of commercial, non-commercial organizations or political parties (**element I**), transfer to share in a commercial organization to trust management are fully declared via a declaration of interest.

[17] arlis.am/DocumentView.aspx?DocID=153169.

Benchmark 2.3.3.

The legislation or official guidelines contain a definition and require the disclosure in the declarations of the following items:

Element	Compliance
A. Beneficial ownership (control) of companies, as understood in FATF standards, domestically and abroad (at least for all declarants mentioned in Benchmark 3.1.), including identification details of the company and the nature and extent of the beneficial interest held	✓
B. Indirect control (beneficial ownership) of assets other than companies (at least for all declarants mentioned in Benchmark 3.1.), including details of the nominal owner of the respective asset, description of the asset, its value	✓
C. Expenditures, including date and amount of the expenditure	X
D. Trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust's settlor, trustees, and beneficiaries	X
E. Virtual assets (for example, cryptocurrencies), including the type and name of the virtual asset, the amount of relevant tokens (units), and the date of acquisition	X

According to the LPS (Article 42), in a declaration of interests, a declarant shall include a name, an identification number, and an address of a commercial organization where a declarant and/or his or her family members are founders or have shares in an authorized capital or are actual beneficiaries. A declarant shall also disclose an amount of direct or indirect participation (units, stocks, shares), dates of acquisition, or becoming a real beneficiary or when he/she or a member of his/her family acquired powers to appoint or dismiss members of an organization's governing board. A definition of an actual beneficiary is provided by the Law on Combating Money Laundering and Financing of Terrorism. Considering this, the country is in line with **element A**.

Similarly, Article 40 of the LPS also requires declarants to declare a property that belongs to a third party by right of ownership but was acquired on behalf of in favour of or at the expense of the declarant, or the declarant actually benefits from that property or disposes of that property. Decision No. 102-N establishing the forms of declarations of property, incomes, expenses, and interests also encompasses all property (debt and other security, equity securities, vehicles, bank deposits, transports, immovable property) "acquired on behalf, in favour or at the expense of the declarant, belonging to the third party by ownership right," or "which the declarant actually benefits from or disposes of." The declaration form covers all key elements required by **element B**, particularly the name of a nominal owner, together with the details about the property (types, location, registration number, nature of the relationship with the declarant).

In terms of **element C**, one-time expenditures exceeding AMD 2 million or foreign currency equivalent or expenses of the same type exceeding AMD 3 million or foreign currency equivalent are included in the declaration of expenses. Among other expenses covered are travel expenses, charges for leasing movable or immovable property, training or other courses, agricultural activities-related expenses, renovations costs, etc. A declarant is obliged to disclose the type, content, amount, and currency of expenditure. However, the form does not include information on the date when the expense was made and, thus, is not compliant with all aspects of this element.

Similarly, non-compliance was established in relation to the disclosure of trusts to which a declarant or a family member has any relation (**element D**). The disclosure covers only the trust management of shares in companies (part 3, Article 42), and the legal framework encompassing trust ownership and similar legal arrangements is not in place. The legislation does not require disclosure of the declarant's or family member's relation to the trust.

Information on the type, origin, currency and amount of virtual assets at the beginning and end of the given year available in electronic accounts and cryptocurrency is disclosed. However, the date of acquisition is not disclosed, which leads to non-compliance with **element E**.

Benchmark 2.3.4.

	Compliance
The legislation or official guidelines require the disclosure in the declarations of information on assets, income, liabilities, and expenditures of family members, that is, at least spouse and persons who live in the same household and have a dependency relation with the declarant	✓

Article 34 (parts 7 and 8) of the LPS requires members of a declarant's family to disclose information on their property, assets, and income upon the official's entry into the office, termination of office, and annually. A broad definition of family members includes the declarant's spouse, minor children (including adopted children), persons under the declarant official's guardianship or curatorship, and any adult person jointly residing with the declarant official. A person is considered as residing together if she/he lives with the official for 183 days or more before a day of entry to the office, upon the termination of official duties, or during the year of declaration. The declaration of family members covers property, income, and expenses, whereas disclosure of interests is included in an official's declaration.

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	✓

All declarations are submitted through an online platform that has been operational since 2015. Hard copies can be submitted in exceptional cases upon preliminary consent of the CPC. According to the CPC Decision N04 of 2020[18], hard copies are allowed in exceptional cases when a declarant does not have access to the e-system. He/she shall (personally or through an administration body[19] exercising control over him/her or through the employer) present grounds for submitting the declaration on paper before the deadline set for submission. Only two declarations (out of a total of 15 598 declarations) were submitted on paper in 2022. Considering the exceptional nature of this provision and that only two such declarations were filed in 2022, the monitoring team considers Armenia compliant. However, the monitoring team recommends stipulating clear criteria based on which the CPC may allow disclosure in such a form.

[18] arlis.am/DocumentView.aspx?DocID=147389.

[19] Supervising authority can be (i) a head of state agency performing enforcement functions in the place of imprisonment; ii) in a military unit or a battalion of the disciplinary battalion, a head of an authorized state administration performing corresponding functions, iii) a head of the medical institution.

Benchmark 2.3.6.

Information from asset and interest declarations is open to the public:

Element	Compliance
A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect the privacy and personal security	✓
B. Information from asset and interest declarations is published online	✓
C. Information from asset and interest declarations is published online in a machine-readable (open data) format	X
D. Information from asset declarations in a machine-readable (open data) is regularly updated	X

All declarations are published on the fifth day after their submission on the website of the CPC. Declarations are publicly accessible one year after the termination of the official's duties, after which the CPC shall archive it. Government Decision No 306 N provides a list of data to be published. Restricted data includes the address of immovable property and data on minors except for their names and last names. Thus, the authorities comply with **elements A and B**.

However, the possibility of extracting data from declarations is limited, as declarations are published only as a downloadable PDF file, thereby not being aligned with **elements C and D**. The CPC developed a new online platform that will allow access to data in a machine-readable format. The platform developed through international support was launched and tested at the time of monitoring in 2023.

Benchmark 2.3.7.

Functionalities of the electronic declaration system include automated cross-checks with government databases, including the following sources:

Element	Compliance
A. Register of legal entities	X
B. Register of civil acts	X
C. Register of land titles	X
D. Register of vehicles	X
E. Tax database on individual and company income	X

In 2022, functionalities of the electronic system of declarations did not allow for an automated cross-check with the registers of legal entities, civil acts, land titles, and vehicles (**elements A-E**). The difficulty of accessing data in other government registries was also a result of the poor data quality. The authorities informed the monitoring team that an automatic transfer of data from the State Population Register and tax database of the State Revenue Committee to the asset declaration system was ensured in 2022. However, this accessibility was ensured only concerning data regarding individuals, whereas data on companies was requested either by sending inquiries via the e-declaration system or through restricted manual access to the respective databases. The monitoring team welcomes the CPC efforts to ensure

interoperability and direct access to all databases of the State Revenue Committee, State Population Register, State Register of Legal Entities of the Ministry of Justice, Civil Status Acts Registration Agency, Road Police, and Cadastre Committee. The newly launched asset declaration platform was tested at the time of the monitoring visit and, as noted by the authorities, will soon be finalized.

Indicator 2.4. There is unbiased and effective verification of declarations with enforcement of dissuasive sanctions

Background

The Corruption Prevention Commission is a dedicated body responsible for analyzing and publishing declarations, detecting conflicts of interest, investigating integrity violations, and imposing administrative sanctions. Declaration verification functions are assigned to the Division of Declarations within the Department for Analysis of Declarations. In 2022, out of 15 598 submitted declarations, the CPC verified 3044, including high-level public officials' declarations.

Assessment of compliance

The scope of verification of asset and interest declarations, both in practice and in legislation, is broad and focuses on identifying COI situations and detecting illicit enrichment or unjustified wealth. The broad range of CPC powers to effectively implement its functions are in place and were routinely used in the reporting period. The CPC applies administrative sanctions for false or incomplete information in declarations, including in relation to declarations of persons holding high-risk positions and based on irregularities detected through media sources. However, no criminal sanctions for intentionally false or incomplete information in declarations were imposed. Non-governmental stakeholders positively assessed the CPC work, although taking into account its broad mandate and crucial role in promoting integrity in the public sector, consideration shall be given to strengthening its human, budgetary, and operational resources.

Benchmark 2.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency, unit, or staff and is implemented in practice:

Element	Compliance
A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%) OR	B (100%)
B. Verification of declarations is assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations and is responsible only for such verification and not for other functions (100%)	

According to Article 25 of the Law on Corruption Prevention Commission (LCPC), the agency is responsible for verifying compliance with requirements for completing and submitting declarations by civil servants and persons holding public positions. The Commission also assesses the reliability and integrity of declared data, conducts risk-based analysis, and reviews declarations based on media and written applications. These functions are assigned to the Department for Analysis of Declarations, particularly its structural unit, the Division of Declarations, with seven officials. Armenia is compliant with **element B** (100% score).

The monitoring team welcomes the significant progress in setting up the CPC and developing the respective legal framework. Its active work in 2022 was positively assessed by non-governmental stakeholders as well. However, considering its broad mandate and extensive workload, stakeholders expressed concerns about the agency being significantly understaffed. The importance of continuously building the capacity building of the CPC personnel and equipping it with all necessary human and operational resources has been recognized by all stakeholders as critical for promoting integrity in the public sector. As explained by the CPC, the lack of human resources can be a result of the disproportion of social guarantees, along with the increased functions of the Commission. It was noted that compared to the social guarantees of persons holding positions in other responsible anti-corruption agencies, the remuneration of the CPC members and its staff is not differentiated.

The CPC raised concerns that the nature of the process of preparing its budget as well as developing and implementing programmes related to its mandate could result in insufficient financial independence of the Commission. According to the government, the budgetary preparation and mid-term financial preparation are conducted in the same manner for all independent bodies, including their own budget preparation and submission to the government and its presentation in the Parliament. In this context, the Council of Europe (Parliamentary Assembly) recommended increasing the capacities of the Commission and also considering the possibility of strengthening the status and independence of the dedicated agency through the revision of the Constitution.[20]

Benchmark 2.4.2.

Verification of asset and interest declarations, according to legislation and practice, aims to detect:

Element	Compliance
A. Conflict of interest (ad hoc conflict of interest or other related situations, for example, illegal gifts, incompatibilities)	✓
B. False or incomplete information	✓
C. Illicit enrichment or unjustified variations of wealth	✓

The mandate of the CPC to verify asset and interest declarations and related legislation was in line with all three **elements A-C** of the benchmark. Particularly, while the detection of conflict of interest is not explicitly stated as an objective of verification, Article 27 of the LCPC indicates that one of the grounds for initiating proceedings by the CPC on a violation of incompatibility requirements, other restrictions, or rules of conduct, and COI is an analysis of declarations (Article 27, part 1). Provided enforcement data shows that violations of conflict of interest and incompatibility restrictions are detected via verification of declarations in practice (see also benchmark 4.5).

Besides, Article 25 of the LCPC stipulates that the Commission ensures compliance with requirements for the completion and submission of declarations and assesses the accuracy and integrity of declared data. If a violation of these requirements is detected, the CPC can initiate administrative proceedings. For more details on the results of verification, see benchmark 2.4.6.

Detecting illicit enrichment or unjustified variation of wealth is not explicitly stated as an objective. Nevertheless, part 7 of Article 25 of the LCPC states that in a case there are doubts regarding significant alteration in assets (an increase in assets and/or reduction of liabilities) or expenditures of a declarant or his/her family member that is not reasonably justified by lawful incomes, the Commission can request

[20] For more information - https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisoires/2021/20211217-ArmeniaInstitutions-EN.pdf.

additional information. Where the declarant, within the specified time limit, fails to provide clarification or additional materials or they are not sufficient to dispel the existing doubts, the Commission shall immediately, but not later than within a three-day period, send the materials to the Prosecutor General's Office. An unjustified variation of wealth is a part of the risk-based analytical tool that is being developed by the CPC (see benchmark 2.4.3).

Benchmark 2.4.3.

A dedicated agency, unit, or staff dealing with the verification of declarations has the following powers clearly stipulated in the legislation and routinely used in practice:

Element	Compliance
A. Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities	✓
B. Have access to registers and databases which are held/administered by domestic public authorities and are necessary for the verification	✓
C. Access information held by the banking and other financial institutions: with prior judicial approval (50%) or without such approval (100%)	✓
D. Have access to available foreign sources of information, including after paying a fee if needed	x
E. Commissioning or conducting an evaluation of an asset's value	✓
F. Providing ad hoc or general clarifications to declarants on asset and interest declarations	✓

The CPC's dedicated staff dealing with verification has extensive powers (**elements A-C, E, F**) clearly stipulated in the legislation routinely used in practice in 2022, except for access to foreign sources (see below on **element D**).

According to Article 25 (part 2) of the LCPC, while analysing the declarations, the Commission shall be entitled to request and receive (including by e-request) from state and local self-government bodies and other persons information, documents regarding declarants, including information containing bank secret, official information on securities transactions made by the Central Depository, information containing insurance secrecy, as well as credit information or credit history from the credit bureau. During analysis of the declarations, for the purpose of inspecting actual possession of property, as well as the acquisition of the property belonging to a third party by the right of ownership on behalf of, in favour of or at the expense of a declarant or actual benefit of that property or disposal of that property by the declarant, the Commission is entitled to apply to the bodies carrying out operational-investigative activities and obtain necessary information. It can also access registers and databases of state and local government bodies necessary to verify declarations (e.g., State Cadastre, Police, Tax Service, State Registry of Legal Entities, etc.). These powers were widely used during the verification of declarations in 2022, and thus, the CPC is compliant with **elements A and B.**

In addition, the LCPC stipulates that interoperability of the database of the Commission with the databases of state and local self-government bodies, organisations, and on-line access of the Commission to the data subject to be declared shall be ensured. Legislative provisions on the CPC's access to information for verification purposes in Armenia are commendable and can be used as a best practice example.

To access information held by banking and other financial institutions, including information on bank secrets, transactions, safe deposit boxes, accounts, and account balances, the Commission does not

require prior judicial approval and, thereby, is compliant with **element C**. However, the scope of information that could be obtained this way is limited to account balances, information on transactions subject to declaration, and gross input and gross output of the accounts during the required period. For the detailed data on all transactions, the CPC had to request the declarant to provide such information with the possibility of applying administrative sanctions for the refusal to comply with the request. While the scope of information that was accessible was limited, it technically complied with the benchmark's element. The monitoring team recommends extending the scope of the CPC's access to the banking information to include direct access to detailed information on transactions based on the request of the Commission and automating such access. The authorities provided three examples of cases of the CPC's access to Central Bank data about total incoming and outgoing financial flows at the declarant's accounts or individual transactions.

The Commission can demand from a state or local self-government body or the officials to conduct free-of-charge studies, perform free-of-charge expert examinations concerning the circumstances subject to disclosure, and submit the results thereon. The authorities noted that, in practice, the evaluation of an asset's value was often done by the CPC through different platforms. Information about the use of these powers during the verification of declarations was presented to the monitoring team, resulting in compliance with **element E**.

The LCPC (Article 24, part 1, point 7) mandates the agency to consult and provide methodological assistance on incompatibility requirements, other integrity-related rules, and submission of declarations. The authorities also noted that in the assessment period, the CPC organized a series of working discussions and training sessions[21] aimed at increasing the awareness of declarants on the legal framework, procedures, and responsibilities for filling out declarations. Authorities noted that consultants for the declaration process are appointed in all bodies tasked with collecting questions from declarants within their respective institutions/bodies and sharing them with the CPC via email. The CPC provides continuous support to declarants through phone calls and emails. Besides, in 2022, a series of short videos has been developed to assist in the declaration process.[22]

As noted above, the only issue in terms of the scope of the Commission's functions was related to access to foreign sources (**element D**). The LCPC does not explicitly refer to the power of the CPC to access foreign sources of information apart from open sources.

[21] http://cpcarmenia.am/hy/news/item/2022/03/29/2022-03-29/ http://cpcarmenia.am/hy/news/item/2022/04/12/2022-04-12/.

[22] http://cpcarmenia.am/hy/news/item/2022/05/24/2022-05-24/.

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

Element	Compliance
A. Declarations of persons holding high-risk positions or functions	✓
B. Based on external complaints and notifications (including citizens and media reports)	x
C. Ex officio based on irregularities detected through various, including open sources	✓
D. Based on risk analysis of declarations, including based on cross-checks with the previous declarations	x

According to the LCPC (Article 25), the Commission conducts an ''inspection of observance of the requirements for completing and submitting a declaration; inspection of reliability and integrity of declared data; mathematical analysis of declared data; declaration analysis based on risk indicators; analysis of declarations based on media publications containing circumstances having importance in terms of the analysis of declarations or based on written applications of persons".

In 2022, out of 15 598 submitted declarations, the CPC verified 3044, including declarations submitted by high-level officials, including the Supreme Judicial Council members (34), the National Assembly deputies (45), members of the executive branch (38), and investigators (79). To ensure risk-based verification, in October 2022, the CPC adopted Decision No. 02-L "On establishing a risk standard for the analysis of statements and approving the list of public positions based on it''.[23] Among the listed positions are President, MPs, Prime-Minister and Deputy Prime-Ministers, ministers, and heads of other independent state bodies. The monitoring team was informed that the CPC will complete the verification of declarations of 95 listed public officials and their family members by July 2023. Thus, the authorities are compliant with **element A**.

Element B requires a dedicated agency to address at least three external complaints and notifications, including citizens and media reports. In 2022, the CPC analyzed only one declaration following a citizen's report, and no grounds for proceedings were found; thus, it is not compliant with the requirement of the element. On the other hand, in 2022, the CPC verified the declarations of 17 officials based on their own detection through media publications, which confirms the compliance with **element C**.

As concerns **element D**, in 2022, an automated risk-based analysis was not in place due to the limitations of the system. However, a temporary solution was developed. Particularly, the CPC manually extracted declared data from the e-system into the Excel file and analysed it by cross-checking with data retrieved from various public registries.[24] The risks included a mathematical mismatch between income and expenditures or acquired property, disappearing assets, identified *inter alia* through cross-checking with earlier declarations, and information mismatch with other governmental databases (e.g., number of vehicles, real estate, etc.). The monitoring team notes that the key purpose of the risk-based approach is to help the government select and prioritize the declarations subject to verification based on possible risks, thus reducing the ex officio verifications. The listed criteria the government uses seem to be a part of its ex officio verification. While the criteria such as mismatch between income and expenditures or acquired

[23] http://cpcarmenia.am/files/legislation/779.pdf.

[24] 995.pdf (cpcarmenia.am), page 14.

property help to identify irregularities in the process of verification, it is not clear to the monitoring team how the existing method allows the CPC to filter and select declarations subject to verification and, thus, the country is not compliant with **element D**.

Benchmark 2.4.5.

The following measures are routinely applied:

Element	Compliance
A. Cases of possible conflict of interest violations (such as violations of rules on ad hoc conflict of interest, incompatibilities, gifts, divestment of corporate ownership rights, post-employment restrictions) detected based on the verification of declarations and referred for follow-up to the respective authority or unit	✓
B. Cases of possible illicit enrichment or unjustified assets detected based on the verification of declarations and referred for follow-up to the respective authority or unit	✓
C. Cases of violations detected following verification of declarations based on media or citizen reports and referred for follow-up to the respective authority or unit	✓

Based on the provided information, the CPC complies with all three **elements A-C**. Particularly, through verification of declarations, in 2022, the Commission initiated eight proceedings on violations of incompatibility requirements against the deputies of the National Assembly, persons holding the positions of a regional governor and a deputy mayor. Besides, the CPC identified possible illicit enrichment or unjustified assets, and three cases were sent to the Prosecutor's Office in 2022. The agency also analyzed one declaration based on a citizen report and reviewed 17 declarations following media publications, and as a result, the CPC applied the administrative penalty in at least three cases.

Benchmark 2.4.6.

The following sanctions are routinely imposed for false or incomplete information in declarations:

Element	Compliance
A. Administrative sanctions for false or incomplete information in declarations	✓
B. Criminal sanctions for intentionally false or incomplete information in declarations in cases of significant amount as defined in the national legislation	x
C. Administrative or criminal sanctions on high-level officials for false or incomplete information in declarations	✓

Sanctions for violating the requirements for completing and submitting declarations or negligently submitting incomplete data are foreseen by Article 169.28 of the Code on Administrative Offences. Submission of false information or concealment of information to be declared results in criminal liability (Article 444 of the Criminal Code).

In 2022, the CPC launched 118 proceedings on violations of declaration regulations. In total, 97 proceedings were initiated for not submitting a declaration on time, 20 for submitting incorrect or incomplete data, and one for violating requirements for filling out a declaration and negligently submitting incorrect or

incomplete data. As a result, 107 proceedings were terminated, and an administrative penalty was applied in 8 cases, complying with **element A**'s requirement. The following three cases of routine application were provided:

1. A former MP did not declare participation in commercial organizations in the 2021 declaration on property, income, and interest submitted upon termination of official duties. The CPC imposed an administrative fine of AMD 200,000 decision on July 19, 2022.
2. A head of the community was punished with a warning for not declaring income and membership in non-commercial organisations; the decision was issued on 6 April 2022.
3. A former MP failed to declare a vehicle, immovable property, and participation in commercial and non-commercial organisations in the declaration on property, income, and interest submitted upon termination of official duties. The fine of AMD 200,000 was imposed on 1 December 2022.

Regarding criminal liability, authorities noted that the Anti-Corruption Committee investigated 31 cases for a deliberate failure to submit a declaration and submission of false information. Seven criminal cases against ten persons were sent to the court with an indictment, and in two cases, guilty verdicts were reached by the courts. The first case concerned a former investigator who was fined for not submitting a declaration upon the termination of duties after the imposition of the administrative fine. Similarly, the former deputy of the community was sentenced to one year of imprisonment for failure to submit a declaration of property, income, and interests (later changed to a conditional sentence). However, these cases concern non-submission of declarations, not intentional false or incomplete information in asset declarations as required by **element B**.

Authorities provided information about six cases of administrative sanctions for incomplete or incorrect submission of the declaration imposed on high-level officials in 2022, which is sufficient for compliance with **element C**.[25] The following three case examples were provided:

1. An MP was fined in the amount of AMD 200 000 for a failure to declare the immovable property in his declaration for 2021; the CPC made a decision on 18 July 2022.
2. A minister was punished with an administrative fine in the amount of AMD 200,000 for not declaring the received income and participation of a family member in commercial organizations. The CPC issued the decision on 19 July 2022.
3. Four cases against judges fined in the amount of AMD 200,000 for i) providing incorrect data on bank account balances and incomplete data on the participation of the adult in a commercial organisation and holding a position; ii) incomplete data on immovable property, incorrect data on bank account balances, and incomplete data on the participation of the adults in a commercial organization; iii) providing incomplete data on the income from the lease of immovable property, incorrect data on bank account balances, incorrect data on securities and participation in commercial organisations as well as transferring the share to trust management; iv) providing incomplete data on the income from the lease and alienation of immovable property.

[25] 995.pdf (cpcarmenia.am).

Box 2.1. Good practice – New asset declaration platform

Developed in 2022 and launched in a testing regime in February 2023, the new Electronic Platform for Declarations of Assets, Incomes, Expenditures, and Interests is crucial in enabling the Corruption Prevention Commission to increase the effectiveness of detection of corruption. The system allows the declarants to prepare and file annual declarations by automatically pulling data from various government databases (e.g. cadastral, civil, state revenue, and police) and auto-populate relevant fields of the declaration form, including data from previously submitted declarations.

Assessment of non-governmental stakeholders

The non-governmental stakeholders welcomed the recent improvements to the legal framework on the prevention and management of conflict of interest. They confirmed that many of their suggestions and research insights were taken into consideration by the government. Nevertheless, NGOs believed that the authorities should continue addressing remaining deficits or inconsistencies in the LPS and legal acts establishing COI norms for different categories of public officials. COI regulations either do not exist or are not adapted to Armenian realities for Government members, officials of autonomous bodies, members of community councils, and officials of other collegial bodies. Stakeholders also pointed out inconsistencies and a lack of practical COI management tools and sanctions in place for members of the parliament and local governance bodies. Civil society organizations suggested enhancing procedures for registering, analyzing, and verifying oral and written COI statements. The stakeholders also believed that detailed guidelines on disclosing and management of COI, as well as additional in-depth studies of the practical implementation of the COI regulations, are critical.

Overall, non-state actors acknowledged changes in building and improving anti-corruption institutions and mechanisms since 2019. Nevertheless, some stakeholders were adamant about the lack of results and changes in the integrity culture. Interviewed stakeholders corroborated the lack of sufficient COI enforcement and mentioned the ongoing investigations concerning representatives of the previous government. The lack of an effective investigation of allegations concerning incumbent high-level officials received inter alia from journalists caused significant discontent among the civil society.

As regards the CPC, there was a consensus among stakeholders regarding the progress in setting up, developing a necessary legal framework, and technically equipping the agency. They also positively assessed the efforts to secure relevant funds and international support for its work. However, most stakeholders explicitly referred to the CPC being understaffed, its extensive workload, and a need for continuous capacity building of CPC personnel.

The stakeholders positively assessed the scope and coverage of the legislation on asset and interest declarations. Issues remained in relation to declarations by members of managing boards of SOEs and the ad hoc nature of the submission in some cases. Some non-state actors expressed concern that officials with supervisory functions, municipal officials responsible for granting licenses or permits, as well as assistants and advisors of the community heads are not subject to the declaration regime.

The high level of accessibility and transparency of public officials' declaration data was confirmed. However, NGOs noted that the platform should allow searching and retrieving information from the content of declarations more easily. The onsite meeting and responses to the questionnaire suggested that information on the verification of declarations by the CPC, including statistics on the practice of submission on declarations, detected violations, initiated proceedings, and progress, shall be communicated more consistently.

3 Protection of whistleblowers

Armenia has a dedicated law on whistleblower protection that was upgraded with important changes in December 2022. As the enactment of the new amendments was outside the evaluation period, they did not impact the compliance ratings. After the changes, the Law on the System of Whistleblowing presented a solid basis for protecting reporters of corruption. Although the Law still had gaps, the main problems concerned the lack of enforcement and the need to build trust in the reporting channels and available protection measures. In practice, most whistleblower reports were submitted through an online platform that allowed anonymous submissions. There have been no cases when the whistleblower required protection, which means that the provisions on the protection and different remedies available to whistleblowers have not been tested in a real case. The internal reporting channels were not clearly set up in the law or in practice, and the capacity to grant effective protection to whistleblowers remained questionable. The Human Rights Defender received the responsibility for monitoring the enforcement of the whistleblower protection legislation but had no dedicated unit or staff dealing with these responsibilities.

Figure 3.1. Performance level for Protection of Whistleblowers is average

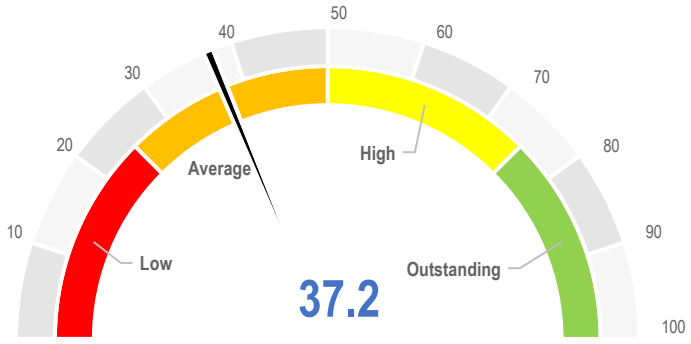
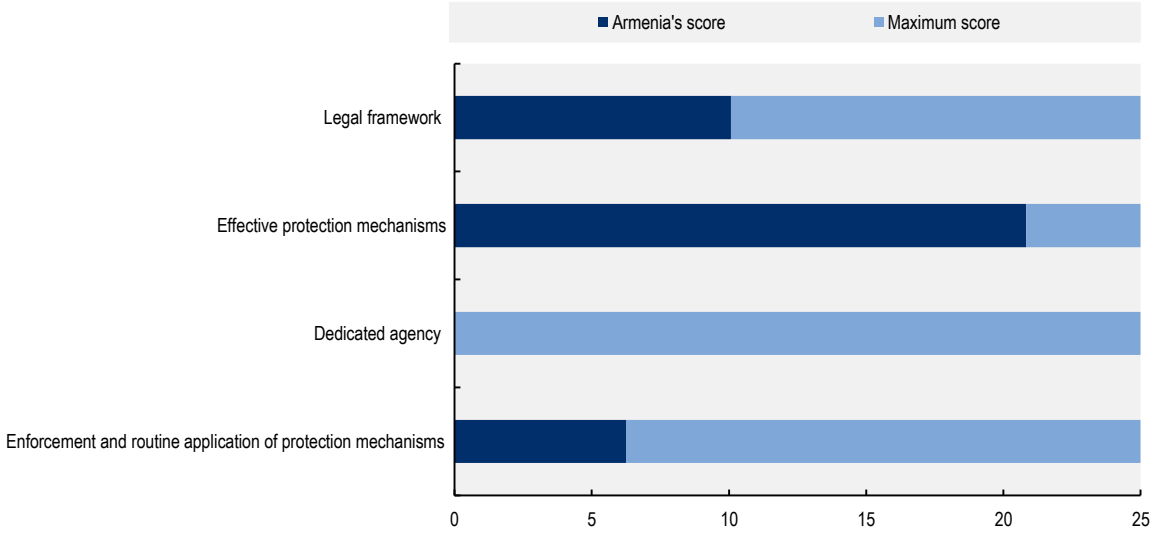


Figure 3.2. Performance level for Protection of Whistleblowers by indicators



Indicator 3.1. The whistleblower's protection is guaranteed in law

Background

The Law on the System of Whistleblowing was enacted in 2018. In December 2022, the parliament introduced important amendments to the Law, improving its provisions, particularly by including the public channel of reporting and shifting the burden of proof in whistleblower protection cases to the defendant (employer). A separate set of amendments adopted in December 2022 assigned additional powers in the area of whistleblower protection to the Human Rights Defender. The 2022 amendments were enacted on 1 January 2023 and cannot impact the compliance ratings in this assessment as the enactment happened outside of the evaluation period limited to 2022.

Assessment of compliance

In Armenia, the Law on the System of Whistleblowing guarantees the protection of whistleblowers. The law granted protection to reporters of corruption-related wrongdoing at the workplace and even extended to candidates for public office, which exceeded the benchmark and was a positive practice. However, the law imposed a duty on the reporting person to check the reported information and disqualified whistleblowing based on a motive, namely, if the person demanded or obtained an advantage because of reporting. The legislation extended to reporting in state bodies (including in defence and security sectors), local self-government bodies, and public organisations but did not cover private sector employees and board members in SOEs – a deficiency addressed by the 2023 amendments. The burden of proof in the disputes about the protection of whistleblower's rights has been shifted to the employer in the administrative proceedings and judicial proceedings (since 2023 for the latter). Only a limited number of whistleblower protection measures were available in 2022 (protection of identity and state legal aid).

Benchmark 3.1.1.

The law guarantees the protection of whistleblowers:

Element	Compliance
A. Individuals who report corruption-related wrongdoing at their workplace that they believed true at the time of reporting	x
B. Motive of a whistleblower or that they make a report in good faith are not preconditions to receiving protection	x
C. If a public interest test is required to qualify for protection, corruption-related wrongdoing are considered to be in public interest, and their reporting qualifies for protection by default	✓

Note: Corruption-related wrongdoing means that the material scope of the law should extend to: 1) corruption offences (see definition in the introductory part of this guide); and 2) violation of the rules on conflict of interest, asset and interest declarations, incompatibility, gifts, other anti-corruption restrictions. At their workplace means that a report is made based on information acquired through a person's current or past work activities in the public or private sector. As such, citizen appeals are not covered.

In Armenia, the primary law (Law on the System of Whistleblowing - LSW) guarantees the protection of whistleblowers as required in the benchmark.

According to the LSW, whistleblower protection extends to persons reporting cases of corruption, violations concerning conflict of interest, rules of conduct, incompatibility requirements, and other anti-corruption restrictions. It conforms with the definition of "corruption-related wrongdoing." The whistleblower definition in the Law is also in line with the "at their workplace" element. The Law even extends the protection to candidates for public office, which exceeds the benchmark and is a positive practice.

As to the "believed true at the time of reporting," the Law requires that the report is made in good faith, which is satisfied if the reporting person complied with all three following conditions: 1) had reasonable grounds for suspicion of a violation; 2) believed the information was veracious; and 3) before whistle-blowing, had undertaken measures to verify the veracity and completeness of the information within the person's real opportunities. The last condition that requires verifying the allegation's accuracy and completeness is problematic, as it goes beyond "believing true at the time of reporting" and imposes an additional duty to check the information, which should not be the reporting person's obligation. Thus, the country is not compliant with **element A** of the benchmark.

The LSW requires that the reporting person acts in good faith. In addition to a condition of "good faith" described above, the Law also assumes that the person acts in bad faith if: 1) the whistleblowing was committed unlawfully, including on the basis of information acquired through the commission of a crime or violation of the constitutional rights of a person; 2) the person demands or gains any advantage for himself or another person; or 3) the person intentionally provided false information in order to cause harm to another person. The requirement to act in good faith is not problematic here because it is not defined through the person's motives. But the disqualifying condition if the person demands or obtains an advantage concerns person's motives for the disclosure (for example, trying to avoid the imminent dismissal) and is, therefore, not in line with the benchmark's **element B**. As there have been no whistleblowing cases so far, there is no practice to test the legal requirements. Representatives of the different government institutions had a diverse interpretation of the conditions for the bad faith qualification.

Public interest is not required in the Law on the System of Whistleblowing and, thus, Armenia is in line with the requirement of **element C**.

Benchmark 3.1.2.

Whistleblower legislation extends to the following persons who report corruption-related wrongdoing at their workplace:

Element	Compliance
A. Public sector employees	✓
B. Private sector employees	X
C. Board members and employees of state-owned enterprises	X

Note: Whistleblower legislation means all legal provisions defining whistleblowing, reporting procedures and protections provided to whistleblowers.

The LSW and respective bylaws extend to reporting in state bodies, local self-government bodies, and public organisations, thus complying with **element A**.

However, during the evaluation of 2022, the LSW did not extend to the private sector employees, as required by **element B**. Amendments enacted in January 2023 extended the Law's definitions of whistleblower and whistleblowing to all organizations, including in the private sector. However, it appears that Article 6 LSW restricts internal whistleblowing only to public sector employees, which deprives private sector employees of the possibility to use the internal reporting channels. This means that private sector employees may not be sufficiently covered by the whistleblowing protection legislation, even considering the amendments enacted in 2023. To be compliant with this element, Armenia also needs to ensure that not only the LSW but also other related legislation (notably the procedures and templates approved by the Government decisions nos. 272 and 439 of 2018) apply to the private sector whistleblowers.

The 2022 amendments extended the definition of whistleblowing and whistleblowers to all organizations and linked them to persons who have "other relations" with the organisations, which are not only based on employment or civil contracts. However, the amendments do not concern the evaluation period of 2022, leading to non-compliance with **element C** of the benchmark.

Benchmark 3.1.3.

Element	Compliance
Persons employed in the defence and security sectors who report corruption-related wrongdoing benefit from equivalent protections as other whistleblowers	✓

The LSW did not differentiate among different public sector employees and, on the face of it, applied to all types of institutions, including the defence and security sectors.

Benchmark 3.1.4.

Element	Compliance
In administrative or judicial proceedings involving the protection of rights of whistleblowers, the law regulating respective procedure puts on the employer the burden of proof that any measures taken against a whistleblower were not connected to the report.	x

The amendments of December 2022 stipulated in the LSW (Article 12) that the defendant (employer) bears the responsibility of proving the legality of the action or inaction taken against the whistleblower. This provision applies only to the judicial proceedings because Article 12 (as follows from its title) concerns judicial protection. The Civil Procedure Code (Article 62) stipulates that each person participating in the case is obliged to prove the facts underlying their claims and objections and relevant to the resolution of the case unless otherwise provided by this Code or other laws. According to the authorities, the latter provision, taken together with the amended Article 12 LSW, will shift the burden of proof on the employer in whistleblower protection disputes. There has been no case law to test this assumption. In any case, the amendment in the LSW was enacted in January 2023, which is outside of the evaluation period.

Under the Administrative Procedure Law (Article 29), the general rule is that the burden of proof lies with the administrative body. Article 43 of the Law on the Basics of Administration and Administrative Proceedings stipulates that "in the relationship between a person and an administrative body, the burden of proof is borne by: a) the person, in the presence of favourable factual circumstances for him; b) the administrative body, in the presence of unfavourable factual circumstances for the person." In addition, there is a presumption of reliability in administrative proceedings: information provided by a person regarding the factual circumstances discussed by the administrative body is considered reliable in all cases until the administrative body proves the opposite (Article 10 of the Law on the Basics of Administration and Administrative Proceedings). In the absence of the case law, altogether, these provisions appear to be sufficient to shift the burden in the administrative proceedings.

Benchmark 3.1.5.

The law provides for the following key whistleblower protection measures:

Element	Compliance
A. Protection of whistleblower's identity	✓
B. Protection of personal safety	X
C. Release from liability linked with the report	X
D. Protection from all forms of retaliation at the workplace (direct or indirect, through action or omission)	✓

The LSW provides for the whistleblower's identity protection, as foreseen by **element A** of the benchmark, by prohibiting disclosing or sharing personal data without the person's consent. The prohibition to disclose the whistleblower's identity is reinforced by the administrative and criminal sanctions for illegal publication or other disclosure of the whistleblower's information (Article 41.5 of the Code of Administrative Offences and Article 502 of the Criminal Code).

To receive "special protection," a whistleblower may apply to the competent authority, which is obliged to promptly decide on the application and, in case of a positive decision, send it to the police to carry out the protection measures to the extent that they are applicable mutatis mutandis as prescribed by the Criminal Procedure Code (a provision enacted in January 2023, which is outside of the evaluation period). The Criminal Procedure Code (Article 73) also allows the Human Rights Defender to request "the body implementing the proceedings" to apply special protection measures to the whistleblower and related persons, on their own initiative or based on the person's application. This provision, however, refers to "the body implementing the proceedings," which means an investigative authority conducting a preliminary investigation in a criminal case. This limits the special protection (at least when requested by the Human Rights Defender) to situations when the whistleblowing report concerns a crime and there is an ongoing criminal proceeding. The monitoring team is also concerned by a broad definition of "competent authority": the definition covers all state bodies, local self-government bodies, and public organizations; the same definition relates to the competent authority as a recipient of external whistleblowing reports and the competent authority that receives applications for the special protection of whistleblowers. It is not clear from the law to whom exactly the whistleblower should address the external reports and request special protection. Considering this, the country is not compliant with **element B**.

According to the LSW (Article 10, part 3.3), a whistleblower may not be subject to any liability for whistleblowing except where his or her act contains elements of a crime. This provision releases the whistleblower from liability only if the act of whistleblowing does not constitute a criminal offence. Such a condition is problematic because it excludes whistleblowing protection, for example, when the report involves a prohibited use of classified information. This is a broad exception that is not limited to cases when the whistleblower committed a criminal offense in order to obtain the reported information (see Guide to the benchmark). For example, the reporting person may obtain classified information lawfully, but its use for reporting an offence may be criminally liable. In any case, the new Article 10, part 3.3., was enacted in January 2023, which is outside of the evaluation period. As a result, Armenia is not compliant with **element C**.

In terms of protection from all forms of retaliation at the workplace (**element D**), according to the LSW, a whistleblower has the right to protection from harmful actions and their consequences, and harmful actions are defined sufficiently broadly. Armenia is compliant with the benchmark's element D.

Benchmark 3.1.6.

The law provides for the following additional whistleblower protection measures:

Element	Compliance
A. Consultation on protection	X
B. State legal aid	✓
C. Compensation	X
D. Reinstatement	X

Out of the listed in the benchmark additional whistleblower protection measures, only state legal aid (**element B**) was available in 2022 (for key protection measures, see benchmark 3.1.5). Particularly, according to the authorities, a whistleblower may qualify for free legal aid on the general conditions stipulated in the Law on Advocacy. The latter (Art.41) affords free legal aid to insolvent natural persons who submit reliable data confirming their insolvency.

Under the LSW (Article 10, part 2.1.), a whistleblower has the right to receive an advisory confidential consultation and legal assistance from the Human Rights Defender. However, this provision was enacted in January 2023, which is outside of the evaluation period, thereby leading to non-compliance with **element A**.

Compensation in **element C** of the benchmark means financial compensation for the damage suffered by the whistleblower as a result of any form of retaliation in the workplace. According to the LSW (Article 10, part 3.1.), while protecting their rights, a whistleblower shall enjoy the means of protection provided for by the Civil Code and other laws of the Republic of Armenia. As the compensation for damages is regulated by the Civil Code and Labour Code, the whistleblower may claim compensation under these codes. However, this provision was enacted in January 2023, which is outside of the evaluation period. To give visibility to the possibility of compensation and to remove doubts that the relevant provisions on compensation in the Civil Code and/or Labour Code are applicable, it would be preferable to mention explicitly in the LSW that a whistleblower has the right to compensation for the damage suffered according to the Civil Code and other applicable laws.

Element D of the benchmark requires that the law provides the legal remedy of reinstatement in a court when a whistleblower is subject to dismissal, transfer, demotion, or the remedy of restoration of a cancelled permit, license, or contract due to having made a report on corruption-related wrongdoing. The authorities refer to Article 10, part 3.1. (cited above) as a ground for applying this protection measure. However, this provision was enacted in January 2023, which is outside of the evaluation period. Also, the provision in the LSW may be insufficient and may need to be reflected explicitly in the Labour Code to be directly applicable. The Labour Code does not provide for the possibility of reinstating the whistleblower if he/she was dismissed due to the report of an offence. The existing provisions of the Labour Code may be limiting. For example, Article 265 provides for the restoration of the employee's violated rights if "the terms of employment have been changed, the employment contract with the employee has been terminated without legal grounds or in violation of the procedure established by the law." This provision may be hard to overcome in the case of a whistleblower whose employment was terminated formally on legal grounds but motivated by retaliation. Armenia is not compliant with element D.

Indicator 3.2. Effective mechanisms are in place to ensure that whistleblower protection is applied in practice

Background

In 2022, all potential whistleblower reports were received through an online platform operated by the Prosecutor's General's Office. Out of total 166 reports, 74 were anonymous (the online platform was the only vehicle for submitting such reports). In total, 82 whistleblower proceedings were initiated, and nine criminal cases started. There were no cases of whistleblower protection measures requested or afforded in practice in 2022.

Assessment of compliance

The law provided for the possibility to submit a report internally, but there was no explicit obligation for the public sector organisations and SOEs to set up internal channels. The only clearly designated channel for external whistleblowing was the online platform run by the Prosecutor General's Office. The possibility of public disclosure was introduced, but it became effective in 2023, which was outside of the evaluation period. Whistleblowers could submit reports through a unified electronic platform for whistleblowing that has been operational since 2019. Anonymous reports were allowed, and the anonymous reporting persons were entitled to protection once their identity was disclosed.

Benchmark 3.2.1.

The following reporting channels are provided in law and available in practice:

Element		Compliance
A.	Internal at the workplace in the public sector and state-owned enterprises	X
B.	External (to a specialized, regulatory, law enforcement or other relevant state body)	✓
C.	Possibility of public disclosure (to media or self-disclosure e.g., on social media)	X
D.	The law provides that whistleblowers can choose whether to report internally or through external channels	✓

The channel must be available in practice, which means that whistleblowers can use it to make reports and that no obstacles preclude whistleblowers from using them. Under this benchmark, the monitoring does not require proof that each channel has been used in practice, only that it was provided in law and available in practice.

Element A requires that internal reporting channels are available at the workplace in the public sector and SOEs. The LSW provides for the possibility to submit a report internally, but there is no explicit obligation for the public sector organisations and SOEs to set up internal channels. The Law directs the whistleblower to submit the report to an immediate supervisor, a superior official, or another person exercising supervision over him or the person authorised by the head of the competent authority. The Government decision no. 272 of 2018 established the requirement to designate persons responsible for the recording and processing of whistleblower reports in each public organisation and inform the organisation's employees about such persons. However, designating responsible persons is not the same as establishing the reporting channels, for example, a dedicated telephone line, email, or web form for submitting internal reports. Also, the Government's decision sets the requirements for recording and processing whistleblower reports when received by the designated persons, but there is no regulation on what happens if the report

is submitted to the immediate supervisor, a superior official, or another person exercising supervision over the whistleblower.

The authorities did not provide data on the use of internal reporting channels in public organisations. According to the 2020 survey conducted by Transparency International in Armenia, out of 57 state bodies, only the Ministry of Defence received whistleblower reports through internal channels.[26] There is also no information on how the Government decision no. 272 was implemented in the public organisations, in particular, whether all institutions have designated responsible persons, adopted procedures for receiving and processing reports, and disseminated information about the responsible persons and how to report violations to them. The Government provided an example of the respective internal order adopted in the Prosecutor General's Office. Considering the above, Armenia is not compliant with **element A**.

"External channels" (**element B**) means that the law designates at least one public sector body to receive reports of corruption-related wrongdoing that persons covered under whistleblower legislation may report to the outside of their place of work. The LSW establishes that external reports should be submitted to the competent authority. However, the Law does not differentiate between competent authority as an organisation that employs the whistleblower and an external organisation. The definition of a competent authority is broad and includes "a state and local self-government body, state and community organisation, public organisation of the Republic of Armenia, which is obliged, by ensuring the guarantees prescribed by this Law, to process the whistleblowing." So, in practice, the whistleblower may not know to what agency refer the external report. The only clearly designated channel for external whistleblowing is the online platform run by the Prosecutor General's Office. The platform is the only destination where an anonymous whistleblower report may be submitted, but the platform may also receive other reports. The anonymous reports may concern both corruption crime reports and reports related to conflict of interests, incompatibility, and violation of other restrictions. The latter will be redirected by the Prosecutor General to the CPC. Because of the operation of the online platform that can be used for external reports (see the table under the next benchmark showing statistics of the platform's use), the monitoring team considers Armenia compliant with **element B** of the benchmark.

As concerns the possibility of public disclosure (**element C**), it was introduced through amendments adopted in December 2022 but enacted in January 2023 and, that is outside of the evaluation period. According to Article 9.2, if the report submitted through other channels was not processed in the manner and time limits provided by the law, a whistleblower may inform the public about the report through the mass media. Therefore, public disclosure before using first internal or external channels is not allowed, including cases when corruption-related wrongdoing presents an imminent or manifest danger to the public or where there is a risk of retaliation or a low chance of the breach being addressed by reporting through external channels (see the Guide).

The Law mentions the availability of internal and external channels and does not restrict the alternative use of one or both. Even though the right to choose is not explicitly provided, the existing provisions are equivalent in their effect and, thus, still compliant with **element D**. For the future, it is advisable to confirm this interpretation in the official guidelines or through an explicit provision in the law.

[26] OECD/ACN (2022), Pilot 5th Round of Monitoring Report on Armenia, 2022, page 61, www.oecd.org/corruption/anti-bribery/corruption/acn/anti-corruption-reforms-in-armenia-e56cafa9-en.htm.

Benchmark 3.2.2.

	Compliance
There is a central electronic platform for filing whistleblower reports which is used in practice	✓

According to the LSW, a whistleblower may anonymously submit a report through the unified electronic platform for whistleblowing that has been put into operation in 2019. While the platform's main objective is to collect anonymous reports, reports where persons identify themselves may also be submitted through the platform. The platform qualifies as a central electronic platform for whistleblowing required by the benchmark. In 2022, 116 reports were submitted through the platform (see table 3.1. below). In the monitoring team's opinion, the platform's functionality could be expanded to receive internal whistleblower reports, whereby the reporting person could choose whether to submit the report to the designated person in the organisation where the reporting person works or externally to the competent authority, by using one of the two corresponding options that the platform would provide. The designated persons in public organisations would need access to the platform to review and reply to such internal reports, preserving the confidentiality or anonymity of the reporting person.

Table 3.1. Reports received through the electronic whistleblower platform

Reports received	2022 year	Explanation
Total number of reports received	116	All reports were related to cases of alleged corruption crimes
Anonymous reports (out of total number)	74	
Whistleblower proceedings initiated (out of total number)	82	
Reports rejected (out of total number)	34	
Criminal case initiated (out of total number)	9	All cases were under pre-trial investigation as of April 2023

Source: Information provided by the Armenian authorities.

Benchmark 3.2.3.

Anonymous whistleblower reports:

Element	Compliance
A. Can be examined	✓
B. Whistleblowers who report anonymously may be granted protection when they are identified	✓

Article 9 LSW stipulates that a whistleblower shall submit an anonymous report through the unified electronic platform. This means an anonymous report can be filed only through the online platform and no other channels, such as the internal ones. Because the online platform operates as a central mechanism for receiving external reports, Armenia is compliant with **element A**. Besides, Article 9, part 5, LSW extends *mutatis mutandis,* the procedure and protection granted for external reports in Article 7 to anonymous reporting which is in line with **element B**.

Indicator 3.3. The dedicated agency for whistleblower protection has clear powers defined in law and is operational in practice

Background

A "dedicated agency, unit or staff" means "an agency, a unit within the agency, or specialized staff that deals exclusively with certain function(s) and do not perform other duties."

Assessment of compliance

There was no dedicated agency, unit, or staff responsible for the whistleblower protection framework in Armenia in 2022. The Human Rights Defender could not be considered such a body because it performed other functions, and there was no dedicated unit or staff within the Defender's office. As there was no dedicated agency, unit, or staff, all benchmarks of this indicator were considered non-compliant. However, the report provides an analysis under the benchmarks that would be applicable were a dedicated unit or staff set up within the Human Rights Defender's office or another institution.

Benchmark 3.3.1.

	Compliance
There is a dedicated agency, unit, or staff responsible for the whistleblower protection framework	X

The authorities referred to the Human Rights Defender as the dedicated authority. However, as the Human Rights Defender performed other functions and there was no dedicated unit or staff within the Defender's office, the monitoring team considers that there is no dedicated agency, unit or staff responsible for the whistleblower protection framework in Armenia, according to this benchmark.

As there was no dedicated agency, unit, or staff, benchmarks 3.3.2. - 3.3.4. are considered non-compliant as well.

Benchmark 3.3.2.

A dedicated agency, unit or staff has the following key powers clearly stipulated in the legislation:

Element	Compliance
A. Receive and investigate complaints about retaliation against whistleblowers	X
B. Receive and act on complaints about inadequate follow up to reports received through internal or external channels or violations of other requirements of whistleblower protection legislation	X
C. Monitor and evaluate the effectiveness of national whistleblower protection mechanisms through the collection of statistics on the use of reporting channels and the form of protection provided	X

Armenia was not compliant with this benchmark's elements as it did not have a dedicated agency, unit, or staff responsible for whistleblower protection. The analysis below considers the situation if the dedicated unit or staff were set up within the Human Rights Defender's office.

As to **element A**, authorities refer to Art. 73 of the Criminal Procedure Code, which, however, concerns the application for special protection measures, not receiving and reviewing complaints about retaliation against whistle-blowers. At the same time, under the Law on Human Rights Defender (Article 24 as amended in 2022 and enacted in 2023, which is outside of the evaluation period), the Defender has the power to apply to the competent state or local self-government body, official or organization, proposing to take measures to protect and restore the'whistleblower's violated rights.

For **element B**, the Law on the Human Rights Defender does not explicitly stipulate the right to receive and act on complaints about inadequate follow-up to reports received through internal or external channels or violations of other requirements of whistleblower protection legislation. The new Article 30.2 added in December 2022 (enacted in 2023, which is outside of the evaluation period) provides that the Defender "contributes to the restoration of whistleblowers' rights and freedoms." The Defender can "monitor the implementation of protective and rehabilitation measures," but it is not clear if this is a supervisory power or whether it concerns only the collection of information and does not allow reacting to cases of non-compliance with the legislative requirements. As noted above, the Defender also has the power to apply to the competent state or local self-government body, official or organization, proposing to take measures to protect and restore the whistleblower's violated rights.

Finally, regarding **element C**, Article 30.2 of the Law on the Human Rights Defender clearly stipulates that the Human Rights Defender should summarize and publish the report and statistics related to whistleblowing in the annual report based on the relevant statistical data of state and local self-governing bodies related to whistleblowing. The report and statistics shall at least contain information on the reports submitted by whistleblowers to the competent authorities (by types and forms) and the protection provided to whistleblowers. Article 30.2 was added by the amendments that were enacted in January 2023, which is outside of the evaluation period.

Benchmark 3.3.3.

The dedicated agency, unit or staff has the following powers clearly stipulated in the legislation:

	Element	Compliance
A.	Order or initiate protective or remedial measures	X
B.	Impose or initiate imposition of sanctions or application of other legal remedies against retaliation	X

Armenia was not compliant with this benchmark's elements as it did not have a dedicated agency, unit or staff responsible for whistleblower protection. The analysis below considers the situation if the dedicated unit or staff were set up within the Human Rights Defender's office.

Regarding **element A**, it appears that the power to initiate protective or remedial measures is provided in the Law on the Human Rights Defender. However, relevant provisions in Article 24 of the Human Rights Defender Law were enacted in January 2023, which is outside of the evaluation period.

As to **element B**, the power of the Human Rights Defender to apply to the competent state or local self-government body, official or organization, proposing to take measures to protect and restore the whistleblower's violated rights does not qualify as "imposing or initiating imposition of sanctions or application of other legal remedies against retaliation."

Benchmark 3.3.4.

	Compliance
The dedicated agency, unit, or staff responsible for the whistleblower protection framework functions in practice	X

The new functions in the area of whistleblower protection were assigned to the Human Rights Defender by the law that came into force on 1 January 2023 (which is outside of the evaluation period), but the Human Rights Defender is not considered a dedicated agency, nor is there a dedicated unit or staff within the Defender's office.

Indicator 3.4. The whistleblower protection system is operational, and protection is routinely provided

Background

There were no cases of whistleblower protection requests or measures taken to protect whistleblowers in 2022.

Assessment of compliance

In 2022, there were no cases to test the whistleblower protection system's operation. The non-governmental stakeholders explained it by a very low awareness and trust of public officials in the internal and external reporting channels, which was partly attributed to the cultural objections to reporting misconduct. For the lack of practice, Armenia was not compliant with benchmarks of this indicator (except for 3.4.4.).

Benchmark 3.4.1.

	Compliance
Complaints of retaliation against whistleblowers are routinely investigated	X

There is no information that any retaliation complaints were received and investigated in 2022.

Benchmark 3.4.2.

	Compliance
Administrative or judicial complaints are routinely filed on behalf of whistleblowers	X

There is no information that administrative or judicial complaints were filed in 2022.

Benchmark 3.4.3.

The following protections are routinely provided to whistleblowers:

Element	Compliance
A. State legal aid	X
B. Protection of personal safety	X
C. Consultations	X
D. Reinstatement	X
E. Compensation	X

There is no information that any of the mentioned protections were applied in 2022.

Benchmark 3.4.4.

	Compliance
There are no cases where breaches of confidentiality of a whistleblower's identity were not investigated and sanctioned	✓

The monitoring team is not aware of any cases where breaches of confidentiality of a whistleblower's identity were not investigated and sanctioned.

Assessment of non-governmental stakeholders

According to the non-governmental stakeholders, the whistleblower protection system is not functioning properly in practice in Armenia. There is a very low awareness and trust of public officials in the internal and external reporting channels, which is partly explained by the cultural objections to reporting misconduct. The perception is that the reporting channels are not developed, and what channels are available is not well-known to officials. Reportedly, there is also a low trust in the online platform as there are doubts that the reports are reviewed by the Prosecutor General's Office and do not end up with the organisations where whistleblowers work. The interlocutors were also concerned by the lack of guarantees or sufficient assurances from the government that the online platform provides anonymity and can be trusted in this regard. Similarly, despite the liability provisions, public officials and other stakeholders do not believe that the confidentiality safeguards in the law are effective.

4 Business integrity

Armenia had a Corporate Governance Code, but its compliance monitoring remained weak. The Government has started revising the Code through a process that has been ongoing for several years without a precise end date. The governance of state-owned enterprises (SOEs) was not in line with international standards; SOEs were not covered by the integrity framework, and corruption risks remained high. The SOEs had a low level of transparency and poor reporting. Armenia has introduced the mandatory disclosure of the company's beneficial ownership through a phased process that should conclude in 2023. Now, it should ensure effective verification of the disclosed information and free public access to beneficial ownership data. There was no dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities in Armenia, even though the business sector would welcome such a mechanism. Should the Human Rights Defender be assigned this mandate, it should be provided with additional resources, including dedicated staff and powers to implement it.

Figure 4.1. Performance level for Business Integrity is low

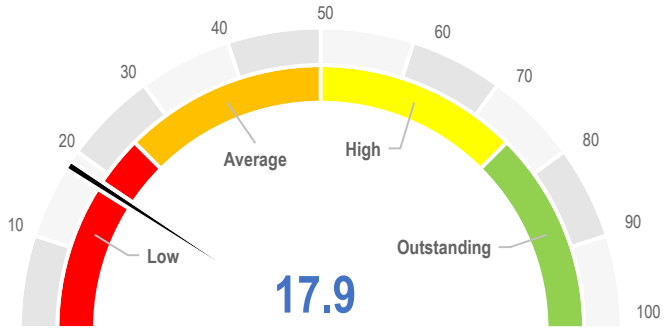
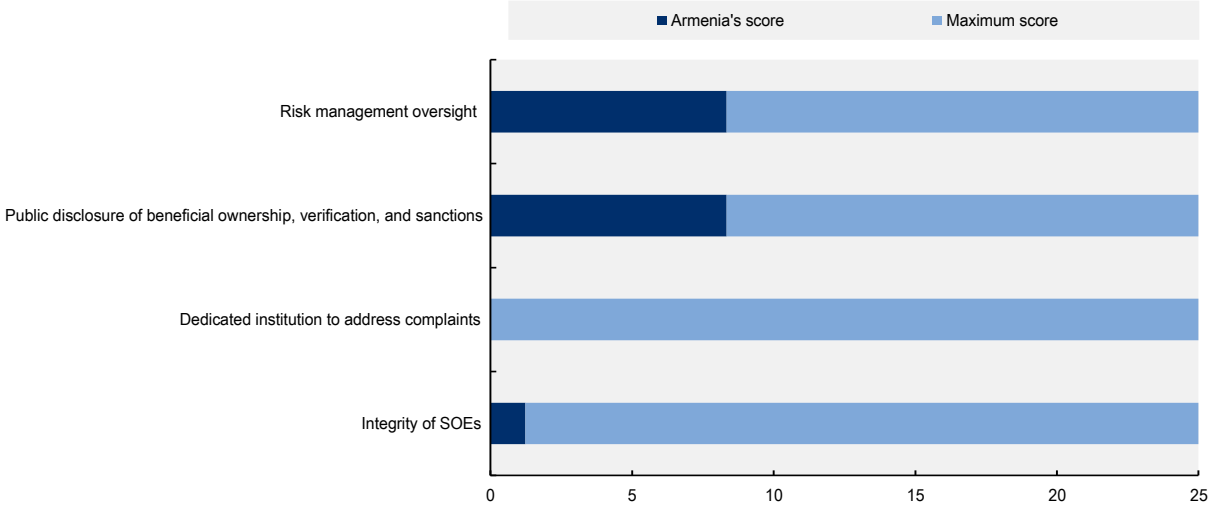


Figure 4.2. Performance level for Business Integrity by indicators



Indicator 4.1. Boards of listed/publicly traded companies are responsible for oversight of risk management, including corruption risks

Background

The current Corporate Governance Code (CGC) was adopted by the Government of Armenia in 2010. The CGC is not mandatory for private companies, though companies listed on the stock exchange are required to disclose information about its implementation in their annual reports and on the website of the exchange. The Government stated that they have re-started the preparation of a new Corporate Governance Code, which had been under consideration during the past several years, but the timing of the adoption of the new code is not clear.

Assessment of compliance

The Corporate Governance Code, adopted by the Government of Armenia in 2010, established the responsibility of listed companies' boards to oversee overall risk management but not specifically related to corruption risks. The CGC is not a legally binding document but includes recommendations to be followed by listed companies and other companies (for example, banks, insurance companies). The rules issued by the Armenian Securities Exchange stipulated that the issuer of securities, listed or applying for listing on the Exchange, must accept and apply at least the principles set forth in the CGC unless it had already applied equivalent or stricter principles of corporate governance. While several entities may have the authority to oversee compliance with the CGC, there was no evidence that it was done in practice.

Benchmark 4.1.1.

Corporate Governance Code (CGC) establishes the responsibility of boards of the companies listed in stock exchanges to oversee risk management:

Element	Compliance
A. CGC or other related documents establish the responsibility of boards to oversee risk management	✓
B. CGC or other related documents establish the responsibility of boards to oversee corruption risk management	x
C. CGC or other related documents which establish responsibility to oversee risk management are mandatory for listed companies	✓

According to the 2010 Corporate Governance Code (the "CGC" or the "Code"), the board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls that enables risk to be assessed and managed. The board is responsible for ensuring that appropriate systems of internal control are in place, in particular, systems for monitoring risk, financial and accounting control, and compliance with laws and regulations. The board may establish a risk-management committee and corporate governance committee, while for banks' boards, establishing a risk management committee is required. The board should also develop a code of ethics, with clear policies and procedures for directors, management and employees on issues such as the use of confidential information; corporate values; business behaviour; relationship with governments and officials; relationship with competitors; 'whistleblowing' arrangements; use and care of the company's property; use of "insider" information; disclosure of potential conflicts of interest; handling of external gifts; observance of laws and regulations; working relations between employees; reporting of breaches of the code of ethics and protecting the confidentiality of such reporting; behaviour towards stakeholders. The Law on Joint Stock Companies and the CGC also require establishing an Audit Committee attached to the board that is responsible, among other tasks, for carrying out internal control of the company, including inspection over the operation of the systems of risk management, conformity with laws, legal acts in force and other requirements (the Law on Joint Stock Companies) and "to review the company's internal control, internal audit, compliance and risk management systems" (CGC). Considering this, the authorities are compliant with **element A**. However, the CGC or other documents do not explicitly establish the responsibility of listed companies' boards to oversee corruption risk management, which is required by **element B** of the benchmark.

The CGC is not a legally binding document but includes recommendations to be followed by listed companies and other companies (for example, banks, insurance companies). The CGC also notes that, among others, listed companies, banks and state-owned enterprises are required to report their level of compliance with the Code in their annual corporate governance statement that is part of their annual report.

The Law on Joint Stock Companies (article 87.1) is mandatory and requires setting up an audit committee that inspects the risk management system's operation. Article 8.47 of the Rules on Securities Listing and Admission to Trading of the Armenian Securities Exchange (the only securities regulated market operator in Armenia) stipulates that the issuer of securities, listed or applying for listing on the Exchange, should accept and apply at least the principles, set forth in the CGC, unless it had already applied equivalent or stricter principles of corporate governance. The Government stated that state-owned enterprises do not have to implement the CGC, but some state-owned enterprises in the energy sector have decided to do so voluntarily (the Nuclear Power Plant was mentioned as an example). The non-governmental stakeholders noted that SOEs (with 50% or more state ownership) were required to report on the basis of the CGC according to Government Decree No. 881 of 23 June 2011. The monitoring team could not verify it as the mentioned decree was not available to it. The monitoring team considers Armenia compliant with **element C**.

Benchmark 4.1.2.

Securities regulator or other relevant authorities monitor how listed companies comply with the CGC:

Element	Compliance
A. The legislation identifies an authority responsible for monitoring the compliance of listed companies with the CGC	X
B. The monitoring is conducted in practice	X

The replies by authorities were ambiguous and stated that the legislation did not provide for an authority responsible for overseeing compliance of listed companies with the CGC (**element A**). The Code itself does not provide that it is mandatory for listed companies, and neither does the Code identify an authority for monitoring compliance. Although the Government stated that the legislation does not identify a supervisory authority, the Government also referred to other legislation that mandates listed companies to comply with the requirements under the CGC (see also benchmark 4.1.1) and that this legislation does list a responsible authority. The Government referred to Articles 47 and 79 of the Listing Rules requiring compliance with the principles set out in the CGC as a mandatory pre-requisite for listing/admission to trading (unless applied equivalent or stricter principles of corporate governance). Armenia Securities Exchange (the "Exchange") exercises ongoing monitoring of compliance with the requirement (Article 83 of the Listing Rules). The listed companies publish their compliance or explain their non-compliance with the CGC on their websites or on www.azdarar.am website, which is the official website of public notices in Armenia.

According to the Government, the Exchange monitors actual compliance by listed companies of the CGC (for instance, how risk management is implemented, how many board members are independent, what are the responsibilities of the Board and management). However, this is not clear from the applicable legislation. Moreover, the Government also stated that the majority of listed companies are banks, and for them, the Banking Law provides for stricter corporate governance standards and board supervision, including a mandatory internal control system (Articles 21.3-21.6 of the Banking Law). The Central Bank of Armenia (the "CBA") noted that they as the supervisory authority for banks conducted monitoring of compliance with the CGC by listed banks.

Finally, the Government mentioned that the legality of corporate actions is checked by the Central Depository of Armenia (the "Depository"), which provides to companies services associated with registrations and transfers within the framework of corporate actions. Such registrations and transfers are executed only after the Depository is assured – after verifying – that the corporate action was performed in strict compliance with relevant laws and regulations (including founding documents and corporate

procedures). The Government did not provide the legal basis for monitoring by the Depository nor proof thereof, so it is not clear to the monitoring team what the scope of the powers of the Depository is.

In terms of practice, as noted above, the Government did not provide proof to the monitoring team of the relevant authorities conducting monitoring of compliance in practice. Thus, the authorities are not compliant with **elements A and B.**

Indicator 4.2. Disclosure and publication of beneficial ownership information of all companies registered in the country, as well as verification of this information and sanctioning of violations of the relevant rules, is ensured

Background

The Law on State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs regulated registration of companies in the State Unified Register of Legal Persons, established under the Ministry of Justice and run by the State Register Agency of Legal Entities of Armenia. Since 2022, the information collected during registration included information on beneficial owners. The obligation to submit such information was rolled out to different types of legal entities in stages.

Assessment of compliance

In 2022, Armenia started collecting information about beneficial owners of companies in practice, but the requirement did not extend to all legal entities as it was introduced in phases. The definition of the beneficial owner was included in the Law on Combatting Money Laundering and Terrorism Financing and complied with the FATF standard. Information about the beneficial owners was collected and published on the www.e-register.am, including in machine-readable format. In 2022, the full scope of information on the beneficial owners was available only for extractive sector companies. Information submitted on beneficial owners was not verified for accuracy and completeness, although the authorities checked the non-submission of information. No sanctions were applied for failing to submit or update information on beneficial ownership or submitting false information about beneficial ownership.

Benchmark 4.2.1.

There is the mandatory disclosure of information about beneficial owners of registered companies:

Element	Compliance
A. The country's legislation must include the definition of beneficial owner (ownership) of a legal entity which complies with the relevant international standard	✓
B. The law requires companies to provide a state authority with up-to-date information about their beneficial owners, including at least the name of the beneficial owner, the month and year of birth of the beneficial owner, the country of residence and the nationality of the beneficial owner, the nature and extent of the beneficial interest held	X
C. Beneficial ownership information is collected in practice	✓

The Law on State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs regulates the registration of companies in the State Unified Register of Legal

Persons, established under the Ministry of Justice and run by the State Register Agency of Legal Entities of Armenia. The information collected during registration includes information on beneficial owners. The definition of the beneficial owner is included in the Law on Combatting Money Laundering and Terrorism Financing. Beneficial owner of a legal entity (except for a trust or another legal arrangement without the status of a legal person under foreign law) means a natural person who: a. Directly or indirectly holds 20 and more per cent of the voting stocks (issued stocks, shares) of the given legal person, or has 20 and more per cent direct or indirect participation in the authorized capital of the legal person; b. Ultimately (de facto) exercises control over the given legal person through other means; c. Is an official carrying out the overall or routine management of the given legal person, in case no natural person complying with the requirements of Subpoints "a" and "b" of this Point is identified. The Government stated that no additional guidance existed on the element "ultimately" (de facto) exercising control because the Government did not want to restrict this element too much. In general, the definition appears to be in line with the FATF definition and, thus, compliant with **element A**.

In 2022, there was no requirement for *all* companies in Armenia to provide information on their beneficial ownership, as foreseen by **element B** of the benchmark. The relevant legislation provided for a phased introduction of the requirement. At first, as a pilot, only companies in the extractive industries were required to submit declarations on their beneficial owners in 2020. Then, a phased introduction of the requirement to submit declarations on beneficial ownership was implemented as set out below:

1. 1 September - 1 November 2021: organisations providing audio-visual media services (e.g. media companies including radio and TV stations and cable networks).
2. 1 January - 1 March 2022: commercial organisations registered in Armenia, except for limited liability companies with only participants who are natural persons.
3. 1 January - 1 March 2023: limited liability companies and non-commercial organisations with only participants who are natural persons.

According to the Government, companies are required to provide a state authority with up-to-date information about their beneficial owners, including at least the name of the beneficial owner, the month and year of birth of the beneficial owner, the country of residence and the nationality of the beneficial owner, the nature and extent of the beneficial interest held. The information on the beneficial owner is submitted within 40 days after the registration and within 40 days after the changes in the information on the beneficial owner; in addition, annually, the legal entity should confirm that the beneficial owner information is accurate and has not changed. The monitoring team could not verify this because – even though requested after the on-site, the monitoring team did not receive the actual provisions in relation to beneficial owner registration as set out in the Law on the "State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs."

As regards the practice (**element C**), information about beneficial owners is collected by filling out the declaration on the www.bo.e-register.am website. The head of the executive body of the legal entity, or the person authorized by him, enters the system and fills in the data about the beneficial owners. The submitted data is verified electronically within two working days and becomes available on the www.e-register.am website.[27] The Government informed that from September to December 2022, 1,279 declarations were submitted and registered through the electronic application system, and from January to April 2023, 45,989 declarations were received and registered.

[27] Examples of published beneficial ownership declarations: www.e-register.am/am/companies/1367358/declaration/29d64531-5b0f-45bd-b09d-5c7cbdd016a0, www.e-register.am/am/companies/1263700/declaration/04691dfc-a71d-4e80-8771-f24c47a124f6.

Benchmark 4.2.2.

Public disclosure of beneficial ownership information is ensured in machine-readable (open data), searchable format and free of charge:

Element	Compliance
A. Beneficial ownership information is made available to the general public through a centralized online register	✓
B. Beneficial ownership information is published in a machine-readable (open data) and searchable format	✓
C. Beneficial ownership information is available to the general public free of charge	X

Information about the beneficial owners is collected and published on the www.e-register.am. Besides, it is published in machine-readable format (JSON) and is searchable. Therefore, Armenia is compliant with **elements A and B**.

Through the information system without paying a state fee, the following are available from the Agency's official website: the name and surname of the legal entity's beneficial owner, the beneficial owner's citizenship, the date of becoming a beneficial owner, the grounds for being the beneficial owner of a legal entity. However, it seems that, in 2022, this information was only available concerning companies in the mining sector, which is not in line with the requirement of **element C**. The monitoring team understood that in 2023, information on beneficial ownership became available for all companies. This falls outside of the scope of this report's monitoring period but will be assessed in the next monitoring report.

Benchmark 4.2.3.

	Compliance
Beneficial ownership information is verified routinely by public authorities.	X

The Government's response has been ambiguous. According to the authorities, in 2022, 1,118 administrative proceedings were initiated, of which about 300 were terminated because the company submitted information on beneficial owners, while 818 proceedings were terminated because the statute of limitation for imposing an administrative penalty passed. A warning has been applied to 115 entities. There was one case in 2023 when, according to the application submitted by a mass media outlet, an administrative proceeding was initiated on the basis of incomplete submission of the declaration regarding the beneficial owners, and after the deficiencies were corrected, the administrative proceeding was terminated. However, the Government has also stated that in 2022, the information submitted on beneficial owners was not verified for accuracy and completeness. See also the next benchmark 4.2.4.

Benchmark 4.2.4.

Sanctions are applied routinely, at least for the following violations of regulations on registration and disclosure of beneficial ownership:

Element	Compliance
A. Failure to submit for registration or update information on beneficial owners	X
B. Submission of false information about beneficial owners	X

The Government confirmed that in 2022, no sanctions were applied for the failure to submit for registration or update information on beneficial ownership. Similarly, no sanctions were imposed for the submission of false information about beneficial ownership.

Indicator 4.3. There is a mechanism to address concerns of companies related to violation of their rights

Background

There was no Business Ombudsman institution in accordance with the benchmark in Armenia. Several non-profit organizations have attempted to provide advocacy and relief functions for the private sector, for example, through the Armenian Lawyers' Association platform (www.bizprotect.am). However, these efforts were uncoordinated and not successful. The Government refers to the Human Rights Defender and the Competition Protection Commission as the entities that can review and address business complaints, but these do not fall under the scope of the benchmark.

Assessment of compliance

As there was no Business Ombudsman type institution in Armenia in 2022, it was not compliant with the benchmarks of this indicator. The Human Rights Defender and the Competition Protection Commission could not be considered as such institutions, for they have a different mandate and scope of authority.

Benchmark 4.3.1.

There is a dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities, which:

Element	Compliance
A. Has the legal mandate to receive complaints from companies about violation of their rights by public authorities and to provide protection or help businesses to resolve their legitimate concerns	X
B. Has sufficient resources and powers to fulfil this mandate in practice	X
C. Analyses systemic problems and prepares policy recommendations to the government on improving the business climate and preventing corruption	X

The Human Rights Defender: Pursuant to the Constitutional Law on the Human Rights Defender, the Human Rights Defender ("HDR") is an ombudsman function which has the authority to consider violations of human rights and freedoms enshrined in the Constitution of Armenia. According to a representative of the HRD, the Department of Civil, Socio-Economic and Cultural Rights Protection deals with the protection of business rights. The HRD informed that business entities submitted 100 complaints to HRD in 2022, mostly focused on the State Revenue Committee of Armenia and utility companies. The HRD did not provide the annual report for 2022, so the monitoring team could not assess what type of complaints were received from business entities during the monitoring year. It seems that fundamental rights in the Constitution that would potentially apply to business entities would be the "freedom of economic activity and guaranteeing economic competition" and the "right to property."

According to the monitoring guide, the benchmark requires the government to appoint or establish in practice an entity that has a special mandate for receiving and following up on alleged violations of company rights by actions or omissions on the part of the state or municipal authorities…" and "[l]egislation should provide this institution with powers to conduct administrative investigations and to provide protection or other legal help, such as requiring a state body canceling decisions that infringed on company's interests, other actions restoring company's legitimate interests."

The HRD does not have a special mandate pursuant to the benchmark to receive complaints by business entities. Given its broad scope, it can consider complaints from business entities (if failing within the scope of the HRD's authority), but the focus of the HRD is on violations of human rights. Furthermore, the HRD – as also acknowledged by their representative to the monitoring team - acts as an intermediary between the relevant public authority and businesses. They do not have powers to conduct administrative investigations, nor can they provide protection to businesses.

According to the business community, the HRD is not a business ombuds institution: some businesses were not even aware of the HRD, while others stated that the HRD's business unit is very modest. According to the business community, they either resolve their issues with public authorities independently or hire lawyers, but they do not generally approach the HRD. The business community did mention that, in their opinion, there is a need for a business ombuds institution in Armenia and that, in the past, they had suggested developing the capacity of HRD in this respect.

The Competition Protection Commission: The authorities also indicated the Competition Protection Commission as an institution that, in their opinion, could be regarded as a business ombudsman type. The Competition Protection Commission is a state autonomous body supervising compliance with the Law on Protection of Economic Competition. It is an administrative body that can impose administrative fines. However, the Competition Protection Commission cannot be classified as a "dedicated institution - an out-

of-court mechanism to address complaints of companies related to violation of their rights by public authorities" under this benchmark because, as set out in the guide "reporting (complaint) channels in law-enforcement and anti-corruption bodies or administrative courts are not counted as designated institutions for receiving company complaints." Moreover, the Competition Protection Commission's mandate is limited to matters concerning competition protection legislation.

Thus, neither the Human Rights Defender nor the Competition Protection Commission comply with **element A** of the benchmark.

Regarding resources to fulfil the mandate in practice (**element B**), the HRD has stated that it has limited resources. Should it be decided to expand the scope of the HRD to provide them with a special mandate to deal with complaints from business entities, then the HRD should receive additional financial and human resources.

As concerns **element C** of the benchmark, it requires that "the institution conduct in practice a regular analysis of problems that local and international companies complain about in relation to the business environment, identify systemic solutions and prepare recommendations for the government in general or to sectoral ministries. There should be an official channel for these bodies to submit their recommendations to the government." The HRD shared one report with the monitoring team for 2022, which is insufficient to determine that there is regular analysis. In any case, the HRD is not considered as a qualifying dedicated institution under this Indicator.

Benchmark 4.3.2.

The institution mentioned in Benchmark 3.1 publishes online at least annually reports on its activities, which include the following information:

Element	Compliance
A. Number of complaints received, and the number of cases resolved in favour of the complainant	X
B. Number of policy recommendations issued, and the results of their consideration by the relevant authorities	X

There was no dedicated institution in Armenia qualifying under this Indicator.

Indicator 4.4. State ensures the integrity of the governance structure and operations of state-owned enterprises (SOEs)

Background

Many SOEs in Armenia were privatised in the 1990s and early 2000s. As of 1 January 2022, there were 134 joint-stock companies with more than 50% state participation; their management powers were assigned to 23 authorized bodies, including eight ministries. The State Property Management Committee monitors all companies with state participation as well as organises the processes of privatisation and liquidation of companies, and at the same time, manages 14 companies under its authority. The management of the remaining companies is carried out by the relevant government agencies and departments. The largest central government-owned SOEs are in the electricity generation sector and the water supply, sewage, waste management, health, post, television, and radio sectors.

The authorities selected the following five SOEs for the assessment under this indicator:

1. "Armenian Nuclear Power Plant" (ANPP) Close Joint Stock Company (CJSC) (total assets exceed $ 100 million)
2. "High Voltage Electric Networks" (HVEN) CJSC (total assets exceed $ 100 million)
3. "Yerevan Thermal Power Plant" (TPP) CJSC (total assets exceed $ 100 million)
4. "Jrar" CJSC (total assets exceed $ 100 million)
5. "Surb Grigor Lusavorich Medical Center" (SGLMC) CJSC (> 500 employees).

Assessment of compliance

The level of corporate governance in the SOEs selected for assessment was low. Very few companies complied with some elements of the benchmarks. Only in one company, at least one-third of its board comprised independent members. Several elements were not applicable because no appointment of CEO or board members took place in 2022 in several companies. There was little information about internal integrity systems in the selected SOEs. The monitoring team considers that building robust anti-corruption compliance systems and developing corporate governance in state-owned enterprises in line with international standards should be included in the government priorities in Armenia.

Benchmark 4.4.1.

Supervisory boards in the five largest SOEs:

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Are established through a transparent procedure based on merit, which involves online publication of vacancies and is open to all eligible candidates	X	N/A	X	N/A	N/A
B. Include a minimum of one-third of independent members	X	X	✓	N/A	N/A

The benchmark (**element A**) requires all vacancies for supervisory board positions to be advertised online ensuring that any eligible candidate has the possibility to apply. The country may be found non-compliant if, for example, insufficient time was provided to apply or if the publication was made in a way that limits its reach to possible candidates. The eligibility requirements should be defined by the national legislation and will not be checked by the monitoring; “based on merit” means that decisions on shortlisting candidates and winning candidates are made because of their merit (experience, skills, integrity) and no other considerations, like political or personal preferences, nepotism, etc. This element is not applicable to the SOEs where no board appointments were made during the reporting year (it will be applicable if at least one board appointment took place during this period).

In Armenia, for the SOEs that have been evaluated, two SOEs (ANPP, Yerevan TPP) were not compliant for lack of information provided by the authorities, and for three other SOEs, the element was not applicable because they had no board members at all or no board appointments in 2022.

The assessment of the compliance with **element A** by each SOE is the following:

SOE	Assessment

ANPP	It seems that one board appointment took place in 2022. No further information was provided to the monitoring team to be able to assess if the appointment was based on merit after a transparent procedure.
HVEN	No board appointments took place in 2022.
Yerevan TPP	There were three appointments in 2022. No further information was provided to the monitoring team to be able to assess if the appointment was based on merit after a transparent procedure.
Jrar	There are no board members.
SGLMC	There are no board members.

As regards the requirement of **element B** on a minimum of one-third of independent members, one SOE (Yerevan TPP) was compliant in 2022 because two out of six board members were independent members, according to the Government information. Two SOEs (ANPP, HVENN) were not compliant for the lack of sufficient information showing compliance. And for two other SOEs, the element was not applicable because they had no board members.

The assessment of compliance with **element B** by each SOE is the following:

SOE	Assessment
ANPP	From the response provided, it seems that ANPP has five board members: two board members represent Ministries, while two board members represent academia, and one board member is from a research institute. It has not been clarified which board members are independent.
HVEN	The response states that there are six board members; four board members are independent and not involved in the current management of the company. The response does not clarify who the independent board members are and what are their functions/roles, so the information could not be verified by the monitoring team.
Yerevan TPP	The responses indicate that two of six board members are independent.
Jrar	There are no board members.
SGLMC	There are no board members.

Benchmark 4.4.2.

CEOs in the five largest SOEs:

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Are appointed through a transparent procedure which involves online publication of vacancies and is open to all eligible candidates	N/A	X	N/A	N/A	N/A
B. Are selected based on the assessment of their merits (experience, skills, integrity	N/A	X	N/A	N/A	N/A

According to the assessment methodology, this benchmark is not applicable to SOEs where no CEO appointments were made during the reporting year. In 2022, **element A**, requiring conducting appointments through a transparent procedure, was not applicable for four SOEs because no CEO appointments took place in 2022. One SOE (HVEN) was not compliant for the lack of information provided by the Government to show compliance. The same conclusions are valid for **element B**.

The assessment of compliance with element A and B by each SOE is the following:

SOE	Assessment
ANPP	No CEO appointment took place in 2022.
HVEN	The response did not clarify if the General Director was appointed in 2022. The monitoring team did not receive sufficient information to assess if the appointment was based on merit after a transparent procedure.
Yerevan TPP	No CEO appointment took place in 2022.
Jrar	No CEO appointment took place in 2022.
SGLMC	No CEO appointment took place in 2022.

Benchmark 4.4.3.

The five largest SOEs have established the following anti-corruption mechanisms:

Element	Compliance				
	ANPP	**HVEN**	**Yerevan TPP**	**Jrar**	**SGLMC**
A. A compliance programme that addresses SOE integrity and prevention of corruption	X	X	X	X	X
B. Risk-assessment covering corruption	X	X	X	X	X

The authorities did not provide information that confirms compliance with **elements A and B** of the benchmark for all SOEs, namely information showing that the respective companies have established a compliance programme addressing integrity and corruption prevention and risk assessment framework covering corruption.

Benchmark 4.4.4.

In the five largest SOEs, the anti-corruption compliance programme includes the following:

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Rules on gifts and hospitality	X	X	X	X	X
B. Rules on prevention and management of conflict of interest	X	X	X	X	X
C. Charity donations, sponsorship, political contributions	X	X	X	X	X
D. Due diligence of business partners	X	X	X	X	X
E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	X	X	X	X	X

For all **elements (A-E)** of this benchmark that concern anti-corruption compliance programmes, all five SOEs were not compliant in 2022 because relevant elements either were not implemented, or information was not provided to the monitoring team.

The assessment of the compliance with all elements by each SOE is the following:

Elements/SOEs	Explanation
ANPP:	
Element A	According to the provided information, hospitality is held in accordance with the Procedure approved by the order of CEO. However, no copy of the order was provided, so this could not be verified by the monitoring team.
Element B	From the information provided, it is not clear whether ANPP's anti-corruption compliance program contains rules or procedures on the prevention and management of conflict of interest. The response only refers to the law on Procurement" regarding procurement, Decision of the Government of the Republic of Armenia 526–N dated May 4, 2017. No further information has been provided.
Element C	According to the response, no rules have been implemented in this respect.
Element D	From the information provided, it is not clear whether ANPP's anti-corruption compliance program contains rules or procedures on conducting due diligence of business partners. The response only states that reliability is checked in accordance with the Decision of the Government of the Republic of Armenia No. 744-N dated 9 June 2005. No further information has been provided.
Element E	No information was provided.
HVEN:	
	The monitoring team could not assess compliance because no information was provided.
Yerevan TPP:	
Elements A-E	The monitoring team could not assess compliance because no information was provided.
Jrar:	
Elements A-E	The monitoring team could not assess compliance because insufficient information was provided. According to the response, Jrar's compliance program is at the final stage, but no further information on the program was provided.
SGLMC:	
Elements A-E	The monitoring team could not assess compliance because no information was provided.

Benchmark 4.4.5.

The five largest SOEs disclose via their websites:

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Financial and operating results	✓	✓	✓	X	X
B. Material transactions with other entities	X	X	X	X	X
C. Amount of paid remuneration of individual board members and key executives	N/A	N/A	X	N/A	X
D. Information on the implementation of the anti-corruption compliance programme	X	X	X	N/A	X
E. Channels for whistleblowing and reporting anti-corruption violations	X	X	X	X	X

For **element A** concerning the online disclosure of financial and operating results of SOEs, three out of five companies were compliant in 2022 by publishing relevant information. As to publishing all other information required in **elements B-E**, all five companies were not compliant in 2022 (except for publication on the amount of remuneration of board members, where it was not applicable to Jrar, which did not have a board and not applicable to ANPP and HVEN where board members did not receive remuneration).

The assessment of the compliance with all elements by each SOE is the following:

SOE / Elements	Explanation
ANPP:	
Element A	The annual financial statement for 2022 was published on the website - www.armeniannpp.am
Element B	The response provided by the authorities states that information is published on the website www.gnumner.am, but no specific link to the webpage with such information was provided
Element C	The response states that the board members are not paid.
Elements D - E	No information was provided to confirm compliance.
HVEN:	
Element A	The annual financial statement for 2022 was published on its website: www.hven.am.
Element B	The response states that information is published on the websites www.armeps.am and www.gnumner.am, but no specific link to the webpage with such information was provided.
Element C	According to the response, the remuneration of the Board members is not defined. The salaries of the Company's employees are reflected in the annual financial and economic activity report of the Company, which is published.
Elements D - E	No information was provided to confirm compliance.
Yerevan TPP:	
Element A	The Annual report 2022 is published on the website (in English and Armenian) - https://ytpc.am/images/reports/AuditReport2022ENG.PDF and https://ytpc.am/images/reports/AuditReport2022ARM.PDF.
Elements B - E	No information was provided to confirm compliance.
Jrar:	
Element A	Jrar has no website
Element B	The response states that information is published on the website - www.gnumner.am, but no specific link to the webpage with such information was provided.
Element C - D	Jrar has no Board; thus, these elements are not applicable.
Element E	No information was provided to confirm compliance.
SGLMC:	

Elements A-E	No information was provided to confirm compliance.

Box 4.1. Methodology for assessing corruption risks in SOEs

The Government informed that in 2023, the Corruption Prevention Commission developed a methodology for assessing corruption risks in SOEs within the scope of the 4th component of the EU Twinning Programme “Promoting Integrity and Preventing Corruption in the Armenian Public Sector”. The methodology is based on a similar methodology for assessing corruption risks of the State of Rhineland-Palatinate of the German Federation, OECD guidelines, as well as the experience of the Republic of Latvia.

After the development of the methodology, in the Spring of 2023, in co-operation with the German experts in Armenia, it was implemented as a pilot programme in three SOEs: "Armenia National Interests Fund" CJSC (ANIF), "Hayantar" State Non-Commercial Organisation, and "Kindergarten No 119 of Yerevan" Community Non-Commercial Organisation.

During the first phase of the pilot, the concept paper for corruption risk management was introduced to the participating organisations, who also received instructions on the completion of a risk matrix. Following question and answer sessions, the organisations were given time to complete the risk matrices. The next step in this pilot was an in-depth assessment of the SOEs' risk processes. With further support from the Corruption Prevention Commission and international experts, it is envisaged to conduct assessments of the three organisations by the end of 2023. Afterward, tailored-made action plans will be developed, including further preventive measures.

Assessment of non-governmental stakeholders

Non-governmental stakeholders mentioned Armenia’s strive to register and publish beneficial ownership information of companies. They were positive about the progress but mentioned that there had been technical issues for companies to register beneficial ownership during the phased implementation of the mandatory requirement (as described in benchmark 4.2.1 above). The non-governmental stakeholders noted that there is a lack of information and recommended the government raise more awareness so that companies know they are required to provide information and understand why they are required to do it. The non-governmental stakeholders advised implementing a pro-active verification mechanism at the State Registry because, currently, it is a very reactive system: checks occur when it is raised that false information may have been provided.

Non-governmental stakeholders recommended for increased transparency of SOEs and to extend to them integrity regulations that are equivalent to those applicable to the public sector employees in Armenia. The stakeholders noted the need to strengthen the corporate governance culture in Armenia because there are currently gaps and deficiencies. Another observation was that measures to improve the integrity of governance structure and operations of SOEs will be more fruitful within a strong corporate governance culture environment. The stakeholders were also concerned that the financial reports of the SOEs were not publicly available or were hard to access (the Armenian National Interest Fund was mentioned as an example).

5 Integrity in public procurement

Armenia had a well-established legal framework for public procurement, which was supported by an e-procurement platform with open eligibility and broad coverage of the entire procurement cycle, including the contract implementation phase. The system aligned with international best practices and principles of transparency, fairness, and accountability and offers a range of procurement methods. The choice of method depended on the estimated value, complexity, and nature of the procurement. The system defined monetary thresholds that determine the procurement procedures to be followed. Below the thresholds, simplified procedures were applied, while above the thresholds, more comprehensive procedures were implemented, ensuring competitive and fair procurement processes. The national e-procurement system (ARMEPS) allowed for the publication of procurement plans, online registration, submission of proposals, evaluation, and contract management. While the Armenian public procurement system made significant strides in promoting transparency and efficiency, several challenges remained. These include the need to enhance the effectiveness of oversight mechanisms, address potential conflicts of interest, strengthen anti-corruption measures, and further streamline procurement processes.

Figure 5.1. Performance level for Integrity in Public Procurement is high

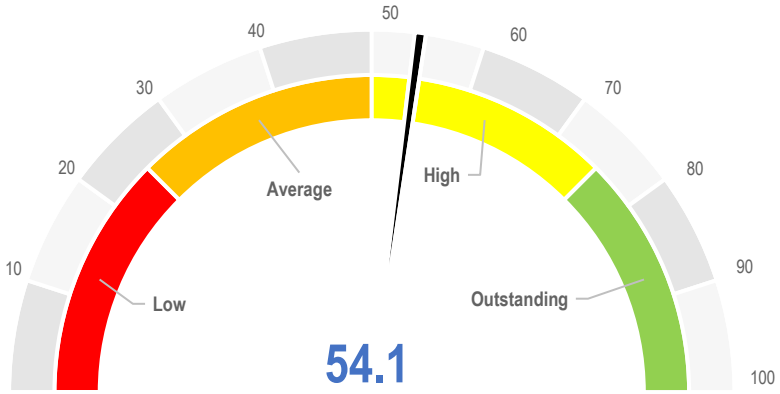
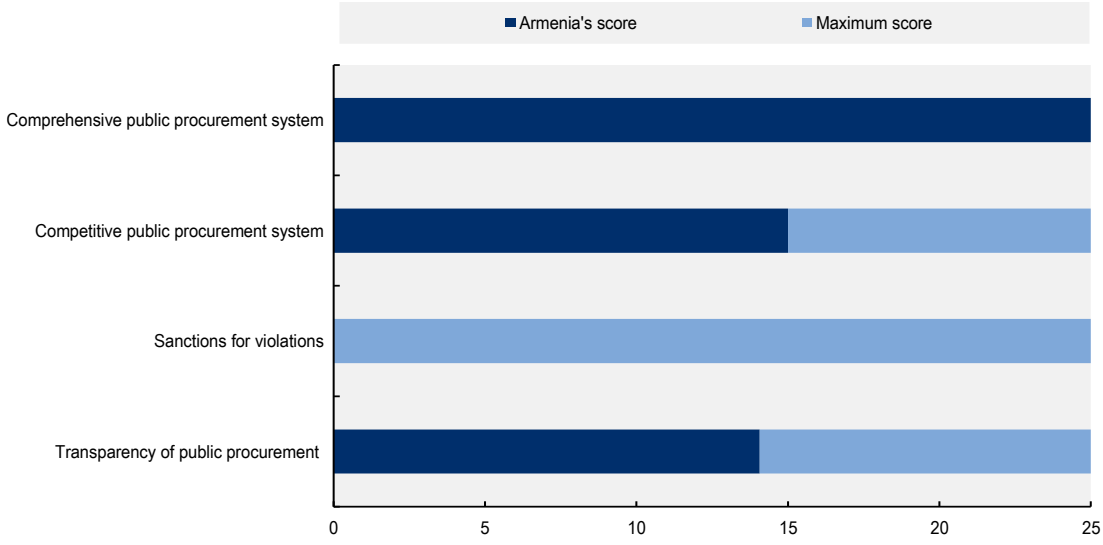


Figure 5.2. Performance level for Integrity in Public Procurement by indicators



Indicator 5.1. The public procurement system is comprehensive

Background

Public procurement in Armenia is regulated by the Law on Procurement of Armenia (LPA), adopted in 2016.

Assessment of compliance

The LPA establishes a comprehensive legal framework for the procurement of works, goods, and services, including consulting services. LPA is aligned with the Agreement on Government Procurement of the World

Trade Organization (WTO GPA), which Armenia is a party to. Since acceding to the GPA, Armenia has continued to refine procurement legislation.

Benchmark 5.1.1.

Public procurement legislation covers the acquisition of works, goods and services concerning public interests by:

Element	Compliance
A. Publicly owned enterprises, including SOEs and municipality owned enterprises	✓
B. Utilities and natural monopolies	✓
C. Non-classified area of the national security and defence sector	✓

The well-established legal framework covers procurement by publicly owned enterprises, including SOEs and municipality owned enterprises and non-classified areas of the defence sector (via LPA and the related secondary legislation), as well as utilities and natural monopolies (through a special Governmental Decree); thus, it is generally in line with all three **elements A-C.**

Article 2 of the LPA provides a detailed definition of contracting authorities subject to law with comprehensive coverage and application in respect of areas of economic activities concerning public interest. It covers, inter alia, public administration and local self-government bodies, state or community institutions, and non-commercial organizations, including those with more than 50% of state or community shares, as well as public organizations from the list approved by the Public Services Regulatory Commission of Armenia (PSRC). The PSRC governs the activities of entities operating in the regulated field of public services, with the exception of persons holding a dominant position in respect of services provided through public networks operation providing certain sector-specific public services based on special or exclusive rights.

Besides, procurement by the utilities and natural monopolies is excluded from the direct application of LPA. They fall under special procurement regulations by the PSRC and are additionally governed by Government Decrees (the latest related Decrees in force are No 526-N of 2017 and No 273-A of 2020). It is understood that procurement by utilities and natural monopolies is regulated by the procurement procedures approved by these organisations, and these procedures shall not contradict the objectives and principles of LPA (LPA Article 52) and are subject to a general appeal procedure provided for in LPA. It shall be noted that the monitoring team has not assessed the coverage of specific regulations of the specific utilities and natural monopolies. The assessment is based on the presentation by the authorities that all such organizations have comprehensive coverage in line with LPA and provide for competitive and transparent procurement arrangements.

The public procurement legal framework includes defence and security-related acquisitions under the LPA, even when procurement contains state secrets.

Benchmark 5.1.2.

	Compliance
The legislation clearly defines specific, limited exemptions from the competitive procurement procedures	✓

LPA Article 23 provides a comprehensive and unambiguous description of limited options for exemption from a competitive procedure. Governmental Decree No. 526-N of 2017 further specifies the conditions and procedures related to these exceptions.

At the same time, the number and total value of the contracts awarded directly (52,450 contracts in the amount of AMD 165,934 million) and signed in 2022 represented 46% of the number of all contracts (113,054) and 42% of their total value (AMD 390,593 million), which suggests that the limited exemptions of the law are often mistreated (It shall be noted that the above figures include the data on health service budget allocations; see benchmark 5.2.1. for more details).

Benchmark 5.1.3.

	Compliance
Public procurement procedures are open to foreign legal or natural persons	✓

LPA Article 7 sets a clear rule for equal participation for all (local and foreign legal or natural persons) in a public procurement process. Armenia is a signee to the WTO GPA, and therefore, public procurement is broadly open to a large group of countries. Participation in a public procurement process can be limited only by a government decree, if necessary, for national security and defence. The geopolitical situation has a big impact on foreign participation (Turkish and Azerbaijani companies do not bid in Armenia, Iranian companies have a very limited presence trade with the EU, and EAEU companies have serious logistic constraints, using routes via Georgia only and no railway links).

A large volume of procurement information is available in the Armenian language only, according to LPA Article 14, but a part of the information is also published in English and Russian.

Statistical data for 2022 illustrates the openness of the public procurement system in Armenia. In the assessment period, foreign legal persons participated in 291 procurement procedures with a value of AMD 22,278 million. As a result, 130 contracts (0.25% of the total number) with a total value of AMD 4,363 million (1.1% of the total value) were awarded to non-resident participants. The relatively low foreign companies' participation may be related to the geographical location of the country, geopolitical situations in the region and use of the official national language rather than legal or administrative restrictions of the procurement system.

Indicator 5.2. The public procurement system is competitive

Background

The annual procurement data is published annually by the Ministry of Finance. The report contains statistics and data analysis of procurements based on the types of expenses and savings, statistics on contracts, number of participants of contracts, types of contracts, types of tender procedures, etc.

Assessment of compliance

Armenian authorities managed to ensure a high level of competition on a number of competitive procedures, with the urgent open competitions securing 3.4 proposals per process on average, whilst the regular open competition secures reasonable 2.2 proposals per procedure. However, there was a substantial number of less competitive processes used, especially inquiry for quotations, where a much higher level of competition is easily achievable. The share of single-source contracts of all public sector contracts appears to be unreasonably high.

Benchmark 5.2.1.

Direct (single-source) contracting represents:

Element	Compliance
A. Less than 10% of the total procurement value of all public sector contracts (100%)	C (50%)
B. Less than 20% of the total procurement value of all public sector contracts (70%)	
C. Less than 30% of the total procurement value of all public sector contracts (50%)	

In 2022, contracts awarded directly in the amount of AMD 165,934 million represented 42% of the total procurement value. However, the authorities informed that due to statistical reasons, the above figures include budget allocations for health services provided to citizens of Armenia, in the amount of AMD 92,810 million. These budget allocations cannot be classified as public procurement per se. Therefore, for the purposes of the assessment, the direct contracting value has been adjusted, so in 2022, the value of the directly awarded contracts (AMD 73,124 million) represented 25% of the total procurement value (similarly adjusted) of AMD 297,783 million.

Benchmark 5.2.2.

The average number of proposals per call for tender is:

Element	Compliance
A. More than 3 (100%)	D (30%)
B. More than 2.5 (70%)	
C. More than 2 (50%)	
D. More than 1.5 (30%)	
E. Less than 1.5 (0%)	

Based on the statistical data for 2022 (135,496 proposals submitted under 71,344 competitive procurement processes), the average number of proposals per competitive procedure was 1.9. The participation rate varies from 1.8 for price quotations (which appears to be very low for this procurement procedure) to 3.4 for so-called ''urgent open tender.'' If only the open tenders (including multi-stage processes) data are assessed, the average participation rate would be as high as 2.5.

Benchmark 5.2.3.

The threshold value for goods contracts:

Element	Compliance
A. Less than EUR 2,500 equivalent (100%)	A (100%)
B. Less than EUR 5,000 equivalent (50%)	
C. Less than EUR 10,000 (30%)	
D. More than 10,000 (0%)	

LPA Article 2 establishes the thresholds (procurement base unit) for small value acquisition of goods, works, and services in the amount of 1,000,000 AMD (about EUR 2,230, as per the exchange rate of 31 December 2022). The total value of the contracts under the threshold placed in 2022 was AMD 485.3 million.

Indicator 5.3. Dissuasive and proportionate sanctions are set by legislation and enforced for procurement-related violations

Background

Procurement regulations on conflict of interest in public procurement are covered by the LPA. The regulatory framework also includes the Government Decision No 526-N and the Law on Public Service, which provides a general framework applicable to all civil servants.

Assessment of compliance

The Armenian public procurement system has only basic provisions to reduce the risk of nepotism and corruption in public procurement. The relatively recent positive development is the focus on the identification of beneficiary ownership of the participants in procurement processes, which is intended to reduce the above-cited risks. In terms of enforcement, no sanctions were imposed for corruption offenses in public procurement in 2022. The requirement to debar natural persons from the award of public sector contracts in case of conviction for corruption offences was in place, although direct contracting arrangements and under threshold procurement are not covered. The responsibility of legal persons was enacted on 1 January 2023, and thus, debarment rules did not apply to legal persons in the assessment period.

Benchmark 5.3.1.

Conflict of interest in public procurement is covered by legislation and applied in practice:

Element	Compliance
A. There are explicit conflict of interest regulations established by law covering all public employees involved in the procurement cycle (from planning to contract completion stage)	X
B. Sanctions are routinely imposed on public employees for violations of conflict of interest rules in public procurement	X
C. There are explicit conflict of interest regulations established by law covering all private sector actors involved in procurement	X

The legislation does not seem to establish a comprehensive legal framework for preventing and regulating COI for all actors involved across all stages of procurement. LPA limits the conflict of interest to people involved in the evaluation of proposals and review of appeals (LPA Articles 33 and 49). The regulatory framework in this respect also includes Government Decision No 526-N and the Law on Public Service, which provides a general framework applicable to civil servants.

As noted earlier in the Report (see benchmarks 2.1.1 - 2.1.4), during the assessment period in 2022, Article 33 of the LPS was not aligned with international standards in terms of the definition of a COI and private interests, methods for resolving COI.

On the procurement side, the legal framework does not seem to recognize different forms of conflict of interest, which may arise at different phases of a procurement process and during the implementation of a resulting contract at the level of different actors, both within and outside of the procuring body. The procurement system does not seem to have an effective mechanism to verify the beneficial ownership of the participants in the competitive procurement process or the party to which a contract is awarded. Although a direct contracting procurement process represents the basis for a substantial part of the public procurement contracts and is widely open to corruption and nepotism risks, it does not seem to envisage verification of beneficial ownership either. Besides, no sanctions for violations of COI in public procurement were imposed in 2022. Thus, the country is not compliant with **elements A and B**.

Beyond a very limited discussion on a potential conflict of interest by participants in LPA Article 7, the involvement of affiliates at different phases of the procurement process does not appear to be well defined, as required by **element C** of the benchmark. No effective control mechanism seems to exist.

At the same time, under a broader regulatory framework, the Competition Protection Commission is involved in the investigation of bid rigging and anti-competitive behaviour in public procurement. In 2022, six proceedings were initiated, and two decisions were made on violation of competition when (i) connected suppliers (foreign company and its local affiliate) participated in the procurement and attempted a bid rigging, and (ii) eight companies coordinated their participation in tenders by Municipality of Yerevan in the form of bid rigging with an attempt to a long term market division and obtaining public contracts in turn, creating artificial price competition. Three other cases involved targeted specifications by public authorities with no conclusive evidence. The Commission also reviewed eleven public procurement cases and made a decision that entailed follow-up legal actions, including one case under which criminal proceedings were initiated.

Benchmark 5.3.2.

Element	Compliance
Sanctions are routinely imposed for corruption offences in public procurement	X

No sanctions were imposed for corruption offenses in public procurement in 2022.

In 2022, the State Control Service (a supervision body under the Prime Minister) studied the legality and efficiency of the acquisition and use of oil products by the Ministry of Defence and, as a result, initiated criminal proceedings. In addition, the Acting Military Prosecutor presented a report on the cases of alleged crimes committed by the officials of the Ministry of Defence related to procurement, namely theft by an organized group with the use of fraudulent practices. Based on the information provided, the Anti-Corruption Committee initiated criminal proceedings. None of the above-mentioned criminal proceedings have been completed during the assessed period.

The non-governmental representatives noted that in the annual report on the corruption crime investigation published by the Office of the Prosecutor General of Armenia, the respective statistics were provided with reference to a specific article of the Criminal Code. As the Code did not include a specific article on corruption related to public procurement, the statistics on corruption crimes in procurement were not explicitly revealed in the report.

Benchmark 5.3.3.

The law requires to debar from the award of public sector contracts:

Element	Compliance
A. All natural persons convicted for corruption offences	X
B. All legal persons and affiliates of legal persons sanctioned for corruption offences	N/A

According to LPA Article 6 (paragraph 3, Part 1), a person or a representative of an executive body is not eligible to participate in procurement in case they were convicted (within five years prior to submission of a proposal) for receiving a bribe, giving a bribe or mediation in bribery and crimes against economic activity provided for by law. It shall be noted that the provision does not seem to be harmonised with the definition of corruption crimes of the Criminal Code of Armenia and provides for narrower coverage. Moreover, the cited provisions do not seem to cover direct contracting arrangements and under threshold procurement, as the provisions explicitly refer to the submission of a proposal, which is not always the case with such types of procurement. In 2022, a list of natural persons debarred from (ineligible for) public procurement did not include any persons debarred from participation based on a conviction for corruption offenses (see benchmark 5.3.4.). Considering this, the country is not compliant with **element A**.

Regarding the responsibility of legal persons, it was introduced to the Criminal Code in July 2022 and enacted on 1 January 2023; thus, the new provisions fall outside the assessment period. In accordance with the assessment methodology and the Guide, if the country's law does not establish liability of legal persons for corruption offences, compliance with **element B** is not assessed (assessment of the framework on the liability of legal persons is covered by PA9, Indicator 2).

Benchmark 5.3.4.

Debarment of all legal and natural persons convicted for corruption offences from the award of public sector contracts is enforced in practice:

Element	Compliance
A. At least one natural person convicted for corruption offences was debarred	X
B. At least one legal person or an affiliate of a legal person sanctioned for corruption offences was debarred	N/A

The authorities did not provide information to demonstrate compliance with the requirement on the debarment of at least one natural person convicted for corruption offences (**element A**). In terms of responsibility of legal persons (**element B**), as noted above, it was introduced to the Criminal Code in July 2022 and enacted on 1 January 2023; thus, it falls outside the assessment period. The element is considered not applicable (assessment of the framework on liability of legal persons is covered by PA9, Indicator 2).

Indicator 5.4. Public procurement is transparent

Background

The e-procurement platform - ARMEPS is widely used, and a large part of the contracting authorities are connected to the system. A procedure for conducting e-procurement through an open tender is established by Government Decree No 386.

Assessment of compliance

Armenian authorities have been using and permanently enhancing its e-procurement platform and data disclosure, covering the entire investment cycle from planning through selection to contract completion, ensuring a substantial degree of transparency. However, procurement data was not available in a machine-readable format in the assessment period. Besides, while a large number of contracting authorities are connected to the system, the electronic procedures were not mandatory for all contracting entities.

Benchmark 5.4.1.

An electronic procurement system, including all procurement methods:

Element	Compliance
A. Is stipulated in public procurement legislation	X
B. Is accessible for all interested parties in practice	✓

According to LPA Article 8, within the scope of the functions defined by the law, communication between procuring entities and economic operators can be carried out electronically, and the announcement and invitation may be provided electronically. Government Decree No 386 establishes a procedure for conducting e-procurement through an open tender, except for tender carried out in two stages, procurement through price quotation and direct awards in case of emergency. Therefore, electronic

procedures are an option, not an obligation, leading to the assessment of **element A** as non-compliant. However, the e-procurement system ARMEPS (www.armeps.am) is widely used, with a large part of the contracting authorities connected to ARMEPS. The aforementioned Governmental Decree lists contracting entities that shall carry out procurement via the platform. This list does not cover all entities defined by LPA.

In terms of accessibility (**element B**), ARMEPS is accessible to all interested parties and allows a free and simple registration with relevant documents and video tutorials. As of 2022, more than 20,120 private entities were registered in the system. The system has an interface in three languages (Armenian, Russian, and English). Procuring entities may also register with the system without any difficulties. The procurement information is published on the following websites: www.armeps.am, www.procurement.am and www.eauction.armeps.am.

Benchmark 5.4.2.

The following procurement stages are encompassed by an electronic procurement system in practice:

Element	Compliance
A. Procurement plans	✓
B. Procurement process up to contract award, including direct contracting	✓
C. Lodging an appeal and receiving decisions	X
D. Contract administration, including contracts modification	✓

The functionalities of ARMEPS encompass all key procurement stages, including publishing notices, making tender documents available, receiving tenders, and recording all aspects of the proceedings, as well as providing key information on contract implementation.

Thus, the system complies with three **(A, B and D) elements** of the benchmark. All procurement plans are published by the contracting authorities on the unified platform of the Ministry of Finance www.procurement.am and www.armeps.am. Announcements of procurement procedures, publication of procurement documents, and minutes of evaluation committees' sessions, as well as contact awards, including direct contracting, are also made through the platforms. Key information on the implementation of contracts, including the complete text of signed contracts, their modifications, completion certificates, and invoices, are exchanged via the mentioned platforms, too. The procurement appeal process (**element C**) is not digitalized.

An e-auction module has been operational since 2018. Irrespective of the use of other ARMEPS facilities, notices and tender documents from all contracting authorities are available on the Ministry of Finance website.

Benchmark 5.4.3.

The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable):

Element	Compliance
A. Procurement plans	✓
B. Complete procurement documents	✓
C. The results of the evaluation, contract award decision, and final contract price	✓
D. Appeals and results of their review	✓
E. Information on contract implementation	✓

All procurement plans are published by the contracting authorities on the unified platform of the Ministry of Finance www.procurement.am and www.armeps.am. Besides, announcements of procurement procedures and procurement documents, minutes of evaluation committees' meetings and decisions on contract awards, including information on the final contract price, are published on the platforms. These publications also cover contracts signed via the direct contracting procedure. Key information on the implementation of contracts, including the complete text of signed contracts, their modifications, completion certificates, and invoices, is publicly available (**elements A-B and D-E**).

As appeals and results of their reviews are concerned (**element C**), they are published and available free of charge to any interested party on the Official Bulletin of Procurement (www.procurement.minfin.am/hy/page/boghoqarkum), which includes data for 2017-2022.

Benchmark 5.4.4.

The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable), in the machine-readable format:

Element	Compliance
A. Procurement plans	X
B. Complete procurement documents	X
C. The results of evaluation, contract award decision and final contract price	X
D. Appeals and results of their review	X
E. Information on contract implementation	X

Procurement data listed in **elements A-E** are not available in a machine-readable format. Where information is published, it is usually available for reading and downloading in Excel, Word, or PDF formats.

Box 5.1. Good practice – Enhancement of the E-Procurement Platform

Armenia created a procurement system largely aligned with fundamental international standards allowing for truly open procurement opportunities for legal and natural persons from any country in the world, being the first to simultaneously accommodate requirements of both global (WTO GPA) and large regional (EAEU) trading agreements. The dataset and information provided, as well as a search mechanism used, show a well-functioning public disclosure system. Since 2012, Armenia has been using and permanently modernizing its e-procurement platform, which focuses not only on selection processes but also on the contract implementation phase, safeguarding a substantial degree of transparency. In 2021, to increase the transparency of public procurement and accountability of winning tenderers, an innovative procedure was introduced to provide for the participation of representatives of the unsuccessful tenderers, public organizations, and media in acceptance of outputs of public contracts valued above AMD 1 million. These actors are given an opportunity to verify the conformity of the outputs vis-à-vis the requirements of the contracts and original proposals.

Assessment of non-governmental stakeholders

During the onsite visit, CSOs expressed a number of concerns regarding corruption-related risks in the public procurement system. Main of them are focused on 1) disproportionately broad use of non-competitive, restrictive and unregulated procurement methods for award of public contracts (so called, ‘’non-purchase expense’’, reportedly defined in Government Decree 706-N); 2) limited regulations and lack of effective control over procurement by public organisations regulated by the Public Services Regulatory Commission outside of the detailed framework of LPA (except of those privately owned); 3) allegedly widely spread nepotism (with conflict of interest not effectively controlled), especially at regional level; 4) use of targeted specification and requirements to be met by only one specific participant, under umbrella of competitive processes; 5) undue use of formal reasons for rejection of offers providing for good value for money in favour of preferred participants; 6) unreliability of information published in e-procurement portals due to lack of effective quality control mechanism; 7) weak contract management capacity and overall risk awareness by procuring agencies; and 8) incomplete and unreliable procurement plans, which are subject to frequent and uncontrolled modifications to procurement plans. Many of the allegations and concerns are supported by the provided official statistics and anecdotal evidence.

6 Independence of judiciary

Armenia has started reforming its judiciary to ensure its independence, integrity and accountability in line with international standards, but further deep reforms are required. Judges have life tenure. The Supreme Judicial Council and three other judicial institutions operate as judicial governance bodies in charge of the judicial career, evaluation, training, and discipline. During the evaluation period of 2022, their composition mostly complied with the monitoring benchmarks, except for the training commission and ethics and disciplinary commission, in which the civil society representation should be increased. Armenia should also consider measures to avoid the politization of appointments of judges and members of the judicial governance bodies, for example, by prohibiting former political officials to be selected in these positions during a certain period. In 2022, judges were selected and promoted through competitive procedures, but the merit-based evaluation system should be further strengthened. The law did not provide for the publication of integrity checks conclusions of the Corruption Prevention Commission; the report recommends that such conclusions should have more impact on the judicial selection decisions. There was an insufficient number of judges to match the high workload. Judges had no judicial recourse to contest disciplinary sanctions against them. The salary of judicial staff was very low, creating integrity risks.

Figure 6.1. Performance level for Independence of the Judiciary is high

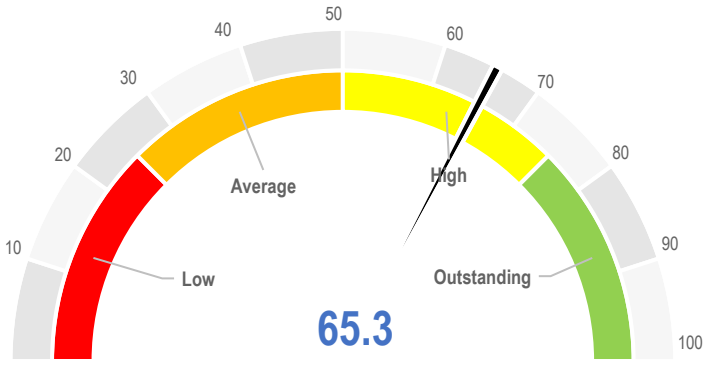
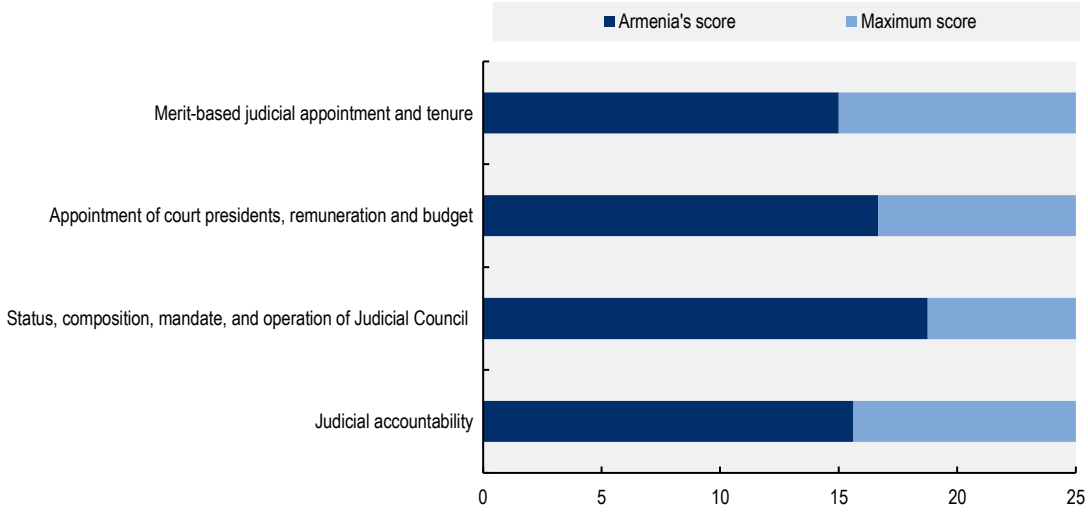


Figure 6.2. Performance level for Independence of Judiciary by indicators



Indicator 6.1. Merit-based appointment of judges and their tenure is guaranteed in law and practice

Background

The judicial system and status of judges in Armenia are regulated by the Constitution and the Constitutional Law "Judicial Code." Judges hold office until attaining the retirement age of sixty-five. There is no initial (probationary) appointment of judges of any court in Armenia. Judges of the Court of Cassation are appointed by the President of the Republic following a nomination made by the National Assembly (parliament) by at least 3/5 of votes of the total number of Deputies from among candidates proposed by

the Supreme Judicial Council. The President of the Republic appoints judges of the first instance courts and courts of appeal upon recommendation of the Supreme Judicial Council.

Assessment of compliance

A constitutional body - the Supreme Judicial Council (SJC) – played a prominent role in the judicial career; the involvement of political bodies had been significantly reduced overall but remained essential in appointing judges. While the President appointed judges of the first instance and appeal courts, the Judicial Code did not include any grounds based on which the President might reject the proposed candidate. There were no such grounds for rejecting candidates for the Cassation Court when the nominations were considered by the parliament. The SJC's candidate recommendations did not include a justification. Judicial vacancies were advertised online, and any eligible candidate could apply, but the monitoring team found that the selection and promotion of judges were not based on merits. As to the dismissal of judges, the powers of a judge were terminated directly by the Supreme Judicial Council without any involvement of the political bodies.

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

Element	Compliance
A. Judges are appointed until the legal retirement age (100%) OR	A (100%)
B. Clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice (70%)	

According to the Constitution of the Republic of Armenia (Article 166), judges hold office until attaining the age of sixty-five. There is no initial (probationary) appointment of judges of any court in Armenia. The country is compliant with **element A**. There is no procedure for confirming judges in office after the initial appointment because all judges are appointed until the legal retirement age.

Benchmark 6.1.2.

A Judicial Council or another judicial governance body plays an important role in the appointment of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly appoints judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	X
B. The Judicial Council or another judicial governance body prepares a proposal on the appointment of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all candidates for judicial office and makes a justified recommendation to the relevant decision-making body (50%)	

Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

The Supreme Judicial Council (SJC) of Armenia qualifies as a judicial governance body under this and other indicators of this PA, as it is set up by the Constitution, is institutionally independent from the executive and legislative branches of government, Chairperson of the Supreme Court and court administration, has a mandate defined by the law, and manages its own budget. There is a different procedure for selecting and appointing judges of the first instance courts, appeals courts, and the Court of Cassation. The procedure is set by the Constitution and the Constitutional Law "Judicial Code." Judges of the Court of Cassation are appointed by the President of the Republic following a nomination made by the National Assembly (parliament) by at least 3/5 of votes of the total number of Deputies from among three candidates nominated by the Supreme Judicial Council for each seat of a judge. The vote for the Cassation Court judicial candidates in the National Assembly is secret and does not provide any justification. Judges of the first instance courts and courts of appeal are appointed by the President of the Republic upon recommendation of the Supreme Judicial Council.

According to the Judicial Code, when appointing judges to the first instance court or the court of appeal, the SJC proposes a candidate to the President, who shall adopt a decree on appointing the proposed candidate or return to the SJC the proposal with the objections. The Judicial Code does not include any grounds based on which the President may reject the proposed candidate. In 2022, the President of the Republic of Armenia rejected the SJC's proposal for a judicial candidate twice.

For the judges of the Cassation Court, the SJC proposes three candidates for each vacant position. The consideration of the candidates in the parliament is regulated by the Constitutional Law "On the Rules of Procedure of the National Assembly", which does not include grounds for rejecting candidates proposed by the SJC to the parliament, nor does it define grounds on which the President of the Republic may reject the candidate elected by the parliament.

As noted above, the Judicial Council does not directly appoint judges and, therefore, does not comply with **element A**. Besides, the Judicial Code does not provide grounds on which the President of the Republic may reject judicial candidates proposed by the SJC for the first instance and appellate court judges as it is foreseen by **element B** of the benchmark. There is also no proof that the rejection decision includes an explanation for its reasons. The same concerns the procedure for the appointment of the Cassation Court judges. In practice, the candidates are rejected because of non-compliance with the legal requirements or

violation of the selection procedure, but these grounds are not provided in the legislation and are too general. The monitoring team found out about cases when the President rejected the candidates because of concerns about their integrity (including based on the conclusions of the Corruption Prevention Commission), which is a positive practice; however, to limit the potential abuse of this power to reject the candidates, respective grounds should be clearly stated in the legislation.

The SJC reviews all candidates for the judicial office, but the analysis of the respective SJC decisions shows that its recommendations made to the relevant decision-making body (Parliament or President, depending on the level of judicial office) were not justified or, in other words, not explained. Therefore, **element C** is non-compliant either.

Benchmark 6.1.3.

A Judicial Council or another judicial governance body plays an important role in the dismissal of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly dismisses judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	A (100%)
A. The Judicial Council or another judicial governance body prepares a proposal on the dismissal of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
B. The Judicial Council or another judicial governance body reviews all proposals for dismissal of judges and makes a justified recommendation to the relevant decision-making body (50%)	

According to the Constitution and the Judicial Code, the powers of a judge are terminated directly by the Supreme Judicial Council without the involvement of the political bodies. Armenia is compliant with **element A**.

Grounds for terminating the powers of a judge are set in the Judicial Code (Article 159) and include the following: violating the incompatibility requirements; committing a significant ("essential") disciplinary violation; engaging in political activities; failure due to temporary incapacity, to perform official duties for more than four consecutive months, or for more than six months during a calendar year, except for the reason of being on maternity leave, leave in case of birth of a child or adoption of a child; physical impairment or disease as a result of which the judge is unable to exercise the judicial powers, or if a judge refused to undergo the mandatory medical examination. Powers of the judge are also discontinued in the following situations: resignation; attaining the age of 65; judgment of a civil court on declaring as having no active legal capacity, missing or dead has entered into legal force; the criminal judgment of conviction has entered into legal force or the criminal prosecution has been terminated on a non-acquittal ground; loss of citizenship of the Republic of Armenia or acquiring the citizenship of another State; death.

Benchmark 6.1.4.

Judges are selected:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

In Armenia, the candidates for judicial positions are first selected into a pool of candidates (candidates do not compete for a particular position in a particular court) from which the final selection is conducted when a vacancy appears. As noted in the Guide to the benchmark, if the country's legislation provides for the preliminary stage of forming a pool of judicial candidates (for example, a reserve), then requirements set in the benchmark apply to the formation of such pools (reserves). Candidates included in the pool should be chosen for the position based on the competition results and not in a discretionary way; otherwise, it would deprive the competitive selection of any sense. The announcement of the possibility of applying to the list of contenders for the judicial office should be made publicly online, and any eligible candidate should be able to apply.

According to the Judicial Code of Armenia, based on the decision of the Supreme Judicial Council, an announcement of judicial vacancies is made online; it must contain the competition requirements, the time and venue for accepting applications, and the number of vacancies to be filled. Any person fulfilling the eligibility criteria provided by the Code may apply. The candidates have one month from the date of publication to submit applications. Therefore, Armenia is compliant with **element A** of the benchmark.

As regards the selection based on merits (**element B**), the Judicial Code provides a detailed regulation of the procedure for the qualification assessment that includes a written exam and an interview with the SJC, along with other steps. In particular, the interview stage aims to ascertain whether the candidate has the skills and qualities necessary to act effectively in the office of a judge by evaluating, among other issues, the professional work experience of the contender, motivation to become a judge, awareness of the requirements of the fundamental legal acts concerning the status of a judge, qualities (in particular, self-control, integrity, conduct, moderate use of reputation (influence), sense of responsibility, listening skills, communication skills, sense of justice, analytical skills and other non-professional qualities necessary for the activity of a judge. The score obtained during the selection to the reserve pool influences the decision to recommend the candidate for the judicial position when a vacancy appears (there are several groups of candidates from which the selection is made one after another).

The SJC decisions to include in the reserve pool do not contain a justification. There are no formal criteria for assessing judicial candidates[28]; the issues that should be discussed during the interview (see the list in the previous paragraph) are not formal criteria for selection and do not require the SJC to select candidates who show the highest compliance with them; there is no clarity as to the weight that is assigned to each of the considerations. The SJC members are provided with a matrix to help them evaluate candidates, but this matrix is only a guideline, and the SJC members do not have to use it to score candidates according to the uniform criteria. Therefore, the final SJC decision on the selection or rejection is fully discretional (with the SJC discussion and vote conducted in camera while the total number of votes for and against is published on the SJC's website). The Venice Commission, in its 2017 opinion, was also

[28] The representatives of the SJC referred to the criteria contained in the SJC order adopted on 27.09.2018, but the monitoring team was not able to review it as it was not provided in English.

concerned that the written examination results could be overturned at the interview stage and do not impact the final decision on the selection.[29]

The practice of judicial selection shows that it may not always be based on merits. The main concern lies with the assessment of integrity, especially the consideration of the conclusions of the Corruption Prevention Commission (CPC), which conducts extensive integrity checks of all candidates for judicial office. The SJC has, in several cases, selected and recommended candidates who had a negative CPC conclusion or a conclusion raising integrity concerns.[30] While the CPC's opinions are advisory, the monitoring team believes that the SJC should not support candidates with a negative conclusion (or conclusions with integrity concerns) without providing a proper justification and considering in detail all allegations against the candidate's integrity raised by the CPC (and other stakeholders) during the candidate's consideration, including by discussing such concerns with the candidate at the interview and explaining the reasons for supporting such a candidate in the SJC decision. The issue with the integrity assessment was highlighted in a recent case of a person whom the SJC recommended for the judicial position in the anti-corruption court in November 2022. CSOs highly criticised the selection,[31] and the candidate reportedly received a negative opinion of the CPC. Eventually, this person was not appointed as a judge of the anti-corruption court according to his own withdrawal, but in a short time, the SJC selected him as the president of the first instance general jurisdiction criminal court of Yerevan.

Non-governmental stakeholders also had the view that the selection of judges was not merit-based (see the NGO opinion at the end of this PA).

[29] In its 2017 opinion on the draft Judicial Code (Venice Commission, Opinion on the Draft Judicial Code of Armenia, 2017, paras.117-118, www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)019-e.), the Venice Commission was also concerned that the written examination results were effectively nullified by the interview results, and the strongest candidate might be replaced after the interview with the weakest one. The Venice Commission recommended defining how the results of the written qualification exam are accounted in the process of recruitment of candidates. This conclusion was repeated in the 2019 Opinion (CDL-AD(2019)024, para. 56, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)024-e): "Written tests permit to evaluate the knowledge and the skills of the candidates in a more objective way. Therefore, the result of the test should play at least some role in the final appointment decision. Indeed, that does not exclude that the final ranking of the candidates must also be influenced by their performance at the interview. Probably, a mixed system, where the points obtained at the written test are added to the points obtained at the interview, could be used. That being said, the most important guarantees against arbitrariness are the transparency of the procedure and the reasoning of the appointment decisions."

[30] According to the SJC, there were two cases in 2022 when it recommended for approval candidates with a negative CPC opinion. See also an NGO (Protection of Rights Without Borders) report with analysis of the selection process for judges of the Anti-Corruption Court in 2022, available at https://prwb.am/en/2023/06/20/zekuyc-7.

[31] See statements by CSOs: LINK, LINK.

Benchmark 6.1.5.

Judges are promoted:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

The SJC compiles lists of candidates for promotion to the Court of Appeal and the Cassation Court following an announcement published online. Any eligible candidate may apply, which is in line with the requirements of **element A**.

Regarding promotion based on merit (**element B**), the Judicial Code stipulates that when drawing up the promotion list of judge candidates, the Supreme Judicial Council shall take into account the skills and qualities necessary for acting effectively in the office of a judge of a Court of Appeal. The advisory opinion on integrity is submitted by the Commission for the Prevention of Corruption in respect of a candidate, whereas in respect of a judge — also the results of performance evaluation. The performance evaluation of a judge is based on the following criteria: 1) quality and professionalism of the judicial work (ability to justify the judicial act; ability to preside over the court session and conduct it as prescribed by law); 2) effectiveness of the judicial work (effective workload management and work planning; examination of cases and delivery of judicial acts within reasonable time limits; observance by a judge of time limits prescribed by law for the performance of individual procedural actions; ability to ensure an efficient working environment); and 3) judge's ethics and conduct (observance of the rules of conduct and ethics; contribution to the public perception of the court and to the confidence therein, attitude towards other judges and the staff of the court).

The weak point in this procedure is the lack of clear criteria on which the SJC members should vote for or against candidates and the lack of justification in the SJC decisions. For these reasons, the procedure is not compliant with **element B** of the benchmark for promoting judges to the court of appeal.

Also, there is a significant difference in the selection of judges to the courts of appeal and judges of the Cassation Court. Regarding the appeals courts, the SJC selects candidates and proposes one candidate to the President, who is limited in the possibility of rejecting the candidate. In the case of the Cassation Court, the SJC must select three candidates for each vacant position and propose them to the parliament. The election among the proposed candidates carried out by the parliament is not merit-based and can be influenced by political considerations. Non-governmental stakeholders also had the view that the promotion of judges was not merit-based (see the section at the end of this PA).

The Armenian authorities informed that, in 2023, they worked on developing a new system for evaluating judges. According to them, implementing the new system will allow the assessment and promotion following more objective criteria and make the process more transparent to society. This objective was included in the draft Action Plan for 2023-2026 of the National Anti-Corruption Strategy. The monitoring team welcomes steps towards improving the merit-based nature and transparency of judicial selection and promotion in Armenia.

Indicator 6.2. Appointment of court presidents and judicial remuneration and budget do not affect judicial independence

Background

The chairpersons of the first instance and appellate courts were appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from among the members of the corresponding court. The National Assembly elected the Chairperson of the Court of Cassation by majority of votes of the total number of Deputies upon recommendation of the Supreme Judicial Council from among the members of the Court of Cassation.

The amount of funding allocated to the judicial system in 2022 amounted to almost 90% of what had been requested. The World Bank report noted that contrary to the trend in demand, budget allocations for the judiciary have decreased over time by 1.7% from 2019 to 2021.

Assessment of compliance

During the evaluation period in Armenia, court presidents were not selected by the judges of the respective court or the Judicial Council. The monitoring found that the existing procedure of court presidents selected by the SJC from among judges of the court who all automatically were considered candidates for the position was not merit-based and not completed through a competitive procedure.

The salary of the specialised anti-corruption judges was relatively high and addressed the additional risks related to the adjudication in these cases. As to other judges, their remuneration was not viewed as sufficient in 2022, especially considering the level of remuneration of prosecutors and the high workload of judges at the first instance court level. Both judges and non-governmental stakeholders agreed that the insufficient remuneration of judicial assistants and court clerks created significant integrity risks.[32]

Benchmark 6.2.1.

Court presidents are elected or appointed:

Element	Compliance
A. By the judges of the respective court or by the Judicial Council or another judicial governance body	X
B. Based on an assessment of candidates' merits (experience, skills, integrity)	X
C. In a competitive procedure	X

According to the Constitution and the Judicial Code, the chairpersons of the courts of first instance and courts of appeal are appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from among the members of the corresponding court, for a term of three years. The National Assembly elects the Chairperson of the Court of Cassation, by majority of votes of the total number of Deputies, upon recommendation of the Supreme Judicial Council, from among the members of the Court of Cassation, for six years. The chairpersons of the chambers of the Court of Cassation are appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from

[32] The Government informed that in July 2023 it approved the draft law stipulating a 60% increase of the salary of judges of the first instance general jurisdiction courts, the bankruptcy court, and the administrative court. If the draft law is adopted, the increase will take effect on 1 January 2024.

among the members of the corresponding chamber for a term of six years. Therefore, Armenia is not compliant with **element A**.

The procedure for the selection of the candidates (**element B**) for the court chairpersons is the following: when the chairperson's position is about to become vacant due to the expiration of the term of office of the current chairperson or shortly after it became vacant on other grounds, the Judicial Department submits to the Supreme Judicial Council the list of all judges of the respective court of first instance who have at least three years of experience in the position of a judge, have not been sanctioned with a disciplinary penalty, have not been appointed as a chairperson of this court during the last three years and are not SJC members. The SJC studies, at its session, the personal files of judges included in the list submitted and, if necessary, invites them to an interview. When considering candidates, the SJC takes into account skills and qualities necessary for acting effectively in the office of a chairperson of the court, including the following: (1) professional reputation of a judge; (2) attitude towards his or her colleagues during a performance of duties of a judge; (3) organisational and managerial abilities of a judge. The SJC holds an open vote (but in a meeting that is held in camera) based on which the person having received the majority vote of all the SJC members is proposed to the President of the Republic. A similar procedure applies to the selection of the chairpersons of a Court of Appeal and the Cassation Court.

The monitoring team considers the selection procedure not merit-based because there are no formal criteria that the selection decision must follow, no consideration of the candidate's qualities compared with other candidates, and no comprehensive analysis of the candidates' merits by conducting interviews with all candidates. In addition to the above issues, the procedure for the selection of the Chairperson of the Cassation Court is not compliant with **element B** of the benchmark because the parliament makes the appointment without following any selection criteria, and the parliament's decision may be influenced by political considerations.

The above-mentioned (see benchmark 6.1.4.) case of a judge who was appointed as the chairperson of the Yerevan first instance criminal court despite negative conclusions of the integrity check and other concerns raised by the civil society also show that the selection of court chairpersons may not be merit-based in practice.[33]

Element C of the benchmark requires that court presidents are elected or appointed via a competitive procedure. In this regard, there is no open call for candidates and no formal process of applying to the court chairperson's position in Armenia. The SJC selects the candidates for the chairperson from all eligible judges of the respective court, so all judges are technically considered candidates even without applying for the position. This goes against the competitiveness of the process when the person is considered a candidate and can be picked even without expressing the intention to become a court chairperson and without being consulted about it. The selection process also has deficiencies as candidates are not interviewed in all cases and for other reasons explained under the previous element.[34] **Element C** is not compliant.

[33] The authorities disagreed with the assessment and stated that the existing rules established clear and objective procedures, clear legislative criteria for the appointment of the court chairman, and that an invitation to an interview was an additional tool and if the interview was made mandatory it could introduce subjectivity.

[34] The authorities disagreed noting that, in the process of appointing the court chairperson, the candidacies of all judges who meet the requirements are subject to discussion in the SJC, and in this way every judge has the right to participate in this process making any interference or subjective influence impossible.

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

Element	Compliance
A. Was not less than 90% of the amount requested by the judiciary or, if less than 90%, is considered sufficient by the judiciary	✓
B. Included the possibility for the judicial representatives to participate in the consideration of the judicial budget in the parliament or the parliament's committee responsible for the budget	✓

The amount of funding allocated to the judicial system in 2022 amounted to 14,227,589.3 thousand AMD, which was 89.6% of what had been requested. As this number is very close to 90% mentioned in the benchmark, the monitoring team considers Armenia compliant under **element A**.

However, as was noted in the World Bank report, contrary to the trend in demand, budget allocations for the judiciary have decreased over time by 1.7% from 2019 to 2021. Further, the wage bill is crowding out all other functions, leaving little to no room for innovation, investments, maintenance, and ICT upgrades. According to the report, Armenia ranked low both in justice spending per gross domestic product as well as in its real per capita justice spending when compared to the European Commission for the Efficiency of Justice member states. Even though the SJC approved its own and the courts' budget applications and medium-term expenditure plans, the SJC's de facto influence on the final budget decision taken by the National Assembly was limited. Low capacities at court and management levels hampered the budget preparation and adoption processes.[35]

As regards the possibility for judicial representatives to participate in consideration of the judicial budget, according to Article 38 of the Judicial Code, the position of the Supreme Judicial Council on the budget bid or the medium-term expenditure programme is presented in the National Assembly by the SJC chairperson or, upon his assignment, the head of the Judicial Department. The Judicial Department is set up by the SJC, and its head can be considered a judicial representative. Armenia is compliant with **element B**.

Benchmark 6.2.3.

The level of judicial remuneration:

Element	Compliance
A. Is fixed in the law	✓
B. Excludes any discretionary payments	✓

According to the Law "On the Remuneration of Persons Holding Public Office and Public Service Positions", the salary of a judge is determined by multiplying the base salary rate and the coefficient, which is different for judges of different levels and specialisations. The State Budget Law establishes the base salary rate amount for each year. Armenia complies with **element A**.

[35] World Bank (2023), Supporting Judicial Reforms in Armenia: A Forward Look, Public Expenditure and Performance Review of the Judiciary in Armenia, p. 2, https://thedocs.worldbank.org/en/doc/a8b97de2cdf5b18ef2d9584d4f758801-0080062023/original/Forward-Look-Armenia-Judiciary-eng.pdf.

There were diverse views on the sufficiency of judicial remuneration in Armenia. Interlocutors noted that the salary of the specialised anti-corruption judges was relatively high and addressed the additional risks related to the adjudication in these cases. As to other judges, their remuneration was not viewed by all stakeholders as sufficient, especially considering the level of remuneration of prosecutors and the high workload of judges at the first instance court level. Notably, in 2023, the remuneration of prosecutors was increased in the law, but it was not immediately matched by the increase in judicial remuneration (although such amendments were later prepared and were expected to be adopted). The Government later informed that in July 2023, it endorsed a draft law stipulating a 60% increase in salary for some categories of judges starting from 2024.

No discretionary payments are provided in the law as foreseen by **element B** of this benchmark.

Indicator 6.3. Status, composition, mandate, and operation of the Judicial Council guarantee judicial independence and integrity

Background

The Supreme Judicial Council is set up based on the Constitution and functions based on the Constitutional Law "Judicial Code" that define its powers. There are three other bodies (the Ethics and Disciplinary Commission, the Training Commission, and the Commission for Performance Evaluation of Judges) that are set up under the Judicial Code by the General Assembly of Judges. The latter is defined as a self-government body of judges (the Judicial Code calls the three mentioned bodies as "the Commissions of the General Assembly"). Though different in their legal status from the Supreme Judicial Council, which is a constitutional body, these three bodies qualify as "judicial governance bodies" according to this monitoring's methodology definition because they are set up by law, are institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court and court administration, have a mandate defined by the law, and manage their own budget. As to the latter aspect, what matters is that the budget of these bodies is not part of the executive branch and that the Judicial Department (a judicial body) manages their budget along with the budgets of the SCJ and courts.

The monitoring team also notes that these bodies are not part of the Supreme Judicial Council; they are separate bodies linked to the judicial self-governance body – the General Assembly of Judges, which decides on their composition (which includes non-judicial members), approves their operational procedures, and creates working groups to support the commissions. The three Commissions perform important functions regarding judicial careers (see next paragraph). In some cases, their decisions are final (for example, on the performance evaluation or determining training needs and training procedures), in others (for example, in disciplinary matters) – the final decisions are with the Supreme Judicial Council, but these bodies play a filtering role and prepare relevant decisions for the SJC consideration. For these reasons, these commissions will be evaluated under this indicator as "judicial governance bodies" along with the Supreme Judicial Council.

The Ethics and Disciplinary Commission institutes disciplinary proceedings against judges and performs other functions assigned to it by the Judicial Code. The Training Commission approves the procedure for training of judges, submits the list of persons that should be trained at the Academy of Judges, prescribes the amount of training required for judges and judge candidates, and performs other functions related to judicial training. The Commission for Performance Evaluation of Judges conducts the performance evaluation of judges, and if it detects a violation of the norms of substantive or procedural law or a violation of the rules of conduct of a judge, it submits a proposal to the Ethics and Disciplinary Commission to institute the disciplinary proceedings against judges.

Assessment of compliance

The Supreme Judicial Council and three other judicial governance bodies functioned in 2022 and played an important role in the selection, promotion, evaluation of judges and holding them liable for disciplinary offences. The composition of all judicial governance bodies included not less than half of judges elected by their peers from different levels of the judicial system, but there was an insufficient number of non-judicial members in the Ethics and Disciplinary Commission and the Training Commission. The decisions of two judicial governance bodies (the SJC and the Training Commission) did not contain an explanation of reasons for taking a decision. Decisions of the Commission for Performance Evaluation of Judges contained a limited explanation, while the Ethics and Disciplinary Commission's decisions contained a detailed justification that ensured transparency of the reasons behind each decision.

Benchmark 6.3.1.

	Compliance			
	Supreme Judicial Council	**Ethics and Disciplinary Commission**	**Training Commission**	**Commission for Performance Evaluation of Judges**
The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers	✓	✓	✓	✓

The Supreme Judicial Council is set up by the Constitution of the Republic of Armenia as an independent state body that guarantees the independence of courts and judges. The Constitution and the Judicial Code define the SJC's powers. Three other bodies (the Ethics and Disciplinary Commission, the Training Commission, and the Commission for Performance Evaluation of Judges) have been set up and operate based on the Judicial Code. All four judicial governance bodies were compliant with the benchmark.

Benchmark 6.3.2.

The composition of the Judicial Council and other judicial governance bodies includes not less than half of the judges who:

Element	Compliance			
	Supreme Judicial Council	**Ethics and Disciplinary Commission**	**Training Commission**	**Commission for Performance Evaluation of Judges**
A. Are elected by their peers	✓	✓	✓	✓
B. Represent all levels of the judicial system	✓	✓	✓	✓

All four judicial governance bodies included not less than half of the judges in their composition. All of them complied with **element A** because their judicial members were elected by other judges. Particularly:

Supreme Judicial Council: The SJC consists of 10 members, including five judges elected by the General Assembly of Judges from among judges having at least ten years of experience as a judge, and five non-

judicial members elected by the National Assembly by at least 3/5 of votes of the total number of Deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience.

Ethics and Disciplinary Commission: The Commission is composed of eight members, six of which are judicial members elected by the General Assembly of Judges and two - non-judicial members.

Training Commission: The Commission is composed of seven members, five of which are judicial members elected by the General Assembly of Judges and two - non-judicial members.

Commission for Performance Evaluation of Judges: The Commission is composed of five members, three of which are judicial members elected by the General Assembly of Judges and two - academic lawyers.

The mentioned four judicial governance bodies also complied with **element B** as their judicial members represented all levels of the judicial system. Namely:

Supreme Judicial Council: Judicial members of the SJC are elected by the General Assembly of Judges from among judges of all court instances, with the following proportionality: 1) one member from the Court of Cassation; 2) one member from the courts of appeal; 3) three members from the courts of first instance; moreover, at least one member should be from the courts of first instance of general jurisdiction of the marzes. Judges of all specialisations must be represented in the Supreme Judicial Council.

Ethics and Disciplinary Commission: Two out of six judicial members are selected from among the judges of specialised courts, two - from among the judges of the Court of First Instance of General Jurisdiction— each of them holding criminal and civil specialisation, respectively, one — from among the judges of the Courts of Appeal, one - from among the judges of the Court of Cassation.

Training Commission: Out of five judicial members, one is selected from among the judges of the Court of Cassation, two - from among the judges of the Courts of Appeal, and two - from among the judges of Courts of First Instance.

Commission for Performance Evaluation of Judges: Out of three judicial members, one is selected from among the judges of the Court of Cassation, one - from among the judges of the Courts of Appeal, and one - from the Courts of First Instance.

Benchmark 6.3.3.

	Compliance			
	Supreme Judicial Council	**Ethics and Disciplinary Commission**	**Training Commission**	**Commission for Performance Evaluation of Judges**
The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives)	✓	X	X	✓

Out of the existing four judicial governance bodies, the compositions of the Ethics and Disciplinary Commission and the Training Commission were not compliant with the requirement of 1/3 of non-judicial members foreseen by this benchmark.

Supreme Judicial Council: Half of the SCJ's composition are non-judicial members elected from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience.

Ethics and Disciplinary Commission: Out of eight members of the Commission, two are lawyers possessing high professional qualities, holding an academic degree in Law or at least five years of professional work experience, not holding membership to any political party, and having not been imposed the restrictions provided for in the law. Two out of eight is less than 1/3. According to the authorities, the Government has been considering a draft law amending the Constitutional Law "Judicial Code" to increase the number of non-judges of the Ethics and Disciplinary Commission to five members.

Training Commission: Out of seven members of the Commission, two are lawyers possessing high professional qualities and holding an academic degree in Law or at least five years of professional work experience. Two out of seven is less than 1/3.

Commission for Performance Evaluation of Judges: Out of five members of the Commission, two are academic lawyers possessing high professional qualities and holding an academic degree in Law and at least five years of work experience. Two out of five members is more than 1/3.

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

Element	Compliance			
	Supreme Judicial Council	Ethics and Disciplinary Commission	Training Commission	Commission for Performance Evaluation of Judges
A. Are published online	✓	✓	X	X
B. Include an explanation of the reasons for taking a specific decision	X	✓	X	X

Out of the four evaluated judicial governance bodies, the decisions of two - the Training Commission and the Commission for Performance Evaluation of Judges – were not published online (**element A**). Particularly:

Supreme Judicial Council: Decisions of the SJC were published online (https://court.am/hy/decisions, https://court.am/hy/disciplinary).

Ethics and Disciplinary Commission: Decisions of the Ethics and Disciplinary Commission concern the disciplinary proceedings against a judge. The Commission does not make a final decision on the disciplinary liability but refers its recommendations to the SCJ. Publishing the preliminary conclusion in the disciplinary proceedings against a judge may affect judicial independence. Considering that the final decision on the disciplinary violation is taken by the SJC, is published online, and includes conclusions of the Ethics and Disciplinary Commission, the monitoring team considers Armenia compliant as to the publication of the Ethics and Disciplinary Commission's decisions.

Training Commission: The decisions of the Training Commission were not made public; the Commission has published only the statistics of its work.

Commission for Performance Evaluation of Judges: The decisions of the Commission for Performance Evaluation of Judges were not made public; the Commission has published only the statistics of its work.

In terms of an explanation of the reasons for taking a specific decision (**element B**), the decisions of two judicial governance bodies (the SJC and the Training Commission) did not contain an explanation of reasons for taking a decision. Decisions of the Commission for Performance Evaluation of Judges contained a limited explanation:

Supreme Judicial Council: The examples of decisions provided to the monitoring team (for example, concerning the nomination of candidates for judicial positions) showed that they did not explain reasons for taking a decision and were limited to referencing the legal acts and stating the decision.

Ethics and Disciplinary Commission: The examples of the Ethics and Disciplinary Commission's decisions provided to the monitoring team showed an extensive explanation of reasons for taking a specific decision based on a disciplinary complaint.

Training Commission: The examples of the Training Commission's decisions provided to the monitoring team showed that the decision on the qualification examination of judicial candidates under Article 104, part 3, of the Judicial Code did not explain reasons for taking a specific decision. Other decisions concerned the authorization for a judge to attend an international conference (a decision that did not require a justification) and the decision on the assessment of the training needs of judges (the decision included a justification with the results of a survey of judges).

Commission for Performance Evaluation of Judges: The examples of the Commission for Performance Evaluation of Judges' decisions provided to the monitoring team showed that they contained an explanation of reasons for taking a specific decision but in a limited way. The decision indicated how many points the judge was allocated by the commission members in total (without specifying individual points allocated by different commission members) and explained the reasons for deducting points when it concerned objective indicators that were based on the statistics (for example, the number of decisions made within the time limits). However, the decision did not explain why the judge received certain points under the quality indicators (for example, the ability to manage the court session and conduct it in the order established by law or the ability to justify the judicial act).

Indicator 6.4. Judges are held accountable through impartial decision-making procedures

Background

The disciplinary investigation into alleged judicial misconduct was carried out by the body entitled to institute disciplinary proceedings against a judge. The Judicial Code defined three such bodies: the Ethics and Disciplinary Commission, the Ministry of Justice, and the Corruption Prevention Commission. The decisions on the application of disciplinary sanctions were taken by the Supreme Judicial Council.

Assessment of compliance

Not all grounds for the disciplinary liability of judges were clear or explained in the legislation. The problem was exacerbated by the active use of these grounds (for example, "the conduct discrediting the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary"). The grounds for violating substantive or procedural law provisions was also found problematic. The disciplinary investigation of allegations against judges was separated from the decision-making in such cases, although the role of the Ministry of Justice in reviewing complaints against judges and initiating disciplinary cases against them raised concerns. The right of judicial appeal against disciplinary decisions of the Supreme Judicial Council did not exist in 2022, which some interlocutors viewed as a serious deficiency affecting judges' rights and depriving them of fair trial guarantees in the disciplinary proceedings. The Criminal Code of Armenia punished delivering an obviously unjust judgment by a judge out of mercenary

motives or other personal motives or group interests; however, no judge was sanctioned under this provision in 2022.

Benchmark 6.4.1.

The law stipulates:

Element	Compliance
A. Clear grounds for the disciplinary liability of judges that do not include such grounds as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" unless the legislation breaks them down into more specific grounds	x
B. All main steps of the procedure for the disciplinary liability of judges	✓

According to **element A** of the benchmark, the legislation shall foresee clear grounds for the disciplinary liability of judges. In this regard, the Judicial Code provides two broad grounds for the disciplinary liability of a judge: 1) a violation of provisions of substantive or procedural law while administering justice or exercising, as a court, other powers provided for by law, which has been committed deliberately or with gross negligence; 2) a gross violation by the judge of the rules of judicial conduct prescribed by this Code, except for the rule defined by point 11 of part 1 of Article 69 of this Law (restrictions on accepting gifts), committed with intent or gross negligence. The violation of the rules of judicial conduct includes such broadly formulated actions as "any conduct discrediting the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary", using or authorising other persons to use the high reputation of the judge for their benefit or for the benefit of another person. Such grounds are not in line with the **element A** requirements.

Where the grounds for disciplinary action are defined in a too vague or too broad manner, there is a higher risk that they could be used in subjective and discretionary ways. The problem is exacerbated by the active use of these grounds; for example, in 2022, SJC applied disciplinary sanctions to six judges for "the conduct discrediting the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary." The ground of violating provisions of substantive or procedural law is also problematic, as the SJC should not review the court decisions, which can be reversed only through appeal proceedings.[36]

The Judicial Code regulates all main steps of the disciplinary proceedings against a judge as required by **element B** of the benchmark.

Benchmark 6.4.2.

	Compliance
The disciplinary investigation of allegations against judges is separated from the decision-making in such cases	✓

The disciplinary investigation is conducted by the body entitled to institute disciplinary proceedings against a judge. The Judicial Code defines three such bodies: the Ethics and Disciplinary Commission, the Ministry

[36] In 2022, the SJC imposed disciplinary sanctions for violating substantive law in two cases and for violating the procedural law requirements – in eight cases.

of Justice, and the Corruption Prevention Commission. The decisions on the application of disciplinary sanctions are taken by the Supreme Judicial Council. Armenia is compliant with this benchmark.

Benchmark 6.4.3.

	Compliance
There are procedural guarantees of the due process for a judge in disciplinary proceedings, namely the right to be heard and produce evidence, the right to employ a defence, the right of judicial appeal, and these guarantees are enforceable in practice	X

The Judicial Code provides several procedural guarantees for a judge in disciplinary proceedings. During the investigative stage, the judge may submit written explanations and evidence, file motions, receive copies of disciplinary proceeding materials from the body instituting the proceedings, and exercise in person or through an advocate of the mentioned rights. During the consideration in the SJC, the judge may familiarise with, take excerpts from, and make copies of the materials that served as a ground for consideration of the issue in the SJC; ask questions, file objections, give explanations, and file motions; submit evidence and participate in their examination; participate in the SJC session, acting in person, as well as through an advocate; etc. There are no reported issues with the enforcement of these guarantees in practice.

The only issue is with the right of judicial appeal against disciplinary decisions of the Supreme Judicial Council, which did not exist in 2022. Judges interviewed during the on-site visit affirmed that they viewed the lack of judicial appeal as a serious deficiency affecting their rights and depriving them of fair trial guarantees in the disciplinary proceedings. The monitoring team agrees with such an assessment and considers the introduction of a court appeal an essential guarantee of judicial independence, especially in the context of Armenia, where interlocutors raised concern about the use of disciplinary proceedings against judges as a tool to suppress dissenting opinions of judges (see the section on the non-governmental views at the end of this Performance Area).

The authorities reported that the Ministry of Justice prepared draft amendments to the Judicial Code, introducing a new system of appeal against the decisions of the Supreme Judicial Council in disciplinary matters by a second-instance panel created within the Council itself. The Venice Commission reviewed the draft law and concluded that "the new mechanism would address the essence of the recommendation of the Committee of Ministers (CM/Rec(2010)12). An appeal to an external judicial body could be a better option, but it requires amending the Constitution. Therefore, the creation of an appellate instance within the Supreme Judicial Council appears to be an acceptable compromise."[37] In its report on Armenia, GRECO stated that "[w]hile an appeal to a court would be a better option, as stated in the [GRECO] recommendation, […] this would require amending the Constitution and that the creation of an appellate instance within the SJC was found to be an acceptable compromise by the Venice Commission."[38]

The benchmark clearly requires that the possibility of a judicial appeal is ensured. As in the previous monitoring rounds of the OECD/ACN Istanbul Anti-Corruption Action Plan, compliance with a benchmark

[37] Venice Commission, CDL-AD(2022)044, Opinion on the draft amendments to the Judicial Code, December 2022), para.48, www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)044-e. The Venice Commission also noted that "in the Armenian context, the most evident solution would be to provide for a right of appeal before an ordinary court, most naturally the Court of Cassation." This option was suggested in the 2017 Opinion of the Venice Commission.

[38] GRECO, March 2023, Fourth Evaluation Round, Second Interim Compliance Report on Armenia, para.36, https://rm.coe.int/grecorc4-2023-6-final-eng-2nd-interim-armenia-conf/1680aac534.

or recommendation may require a constitutional amendment. In any case, the said amendments have not been adopted, and during the evaluation period in 2022, Armenia was not compliant.

Benchmark 6.4.4.

	Compliance
There is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice), or such sanctions are not used in practice	✓

Article 482 of the Criminal Code of the Republic of Armenia punishes delivering an obviously unjust judgment or other judicial act by a judge out of mercenary motives or other personal motives or group interests. However, no judge was sanctioned under this offence in 2022 and, therefore, Armenia is compliant with the benchmark.

Assessment of non-governmental stakeholders

The non-governmental stakeholders noted the issues with the selection and promotion of judges. In their opinion, the existing system is not merit-based and political considerations influence the decisions. The Supreme Judicial Council does not properly assess the integrity of the judicial candidates and often disregards the integrity check conclusions provided by the Commission on the Prevention of Corruption (CPC). The CPC's opinions are not public, which allows the SJC to disregard them. According to the interlocutors, as a possible reform in this regard, the CPC opinions should be made public, or, if not possible, then at least the summary of conclusions (whether the check was positive or negative) should be made public, and the SJC should be required to carefully consider each allegation of the lack of integrity. The CPC should also raise publicly the issue of consideration of its integrity check conclusions, as currently, the Commission is not vocal about this problem. The interlocutors noted the different approach to treating the CPC opinions by the prosecutorial bodies that consider the appointment or promotion of prosecutors compared with the consideration of the CPC opinions for judicial appointments; reportedly, in the case of prosecutors, the CPC integrity check opinions are reviewed and have an impact on the final decision. An NGO also proposed restricting the appointment as judges of candidates who have been engaged in political parties/political activity or held a political position in the past 2-3 years to ensure a higher level of independence and impartiality of judges.

According to NGOs, civil society organisations are not consulted when the non-judge members of the Supreme Judicial Council are nominated and considered. In practice, according to NGOs, when selecting the candidates, the ruling party in Parliament gives preference to the candidate that could be considered loyal or at least close to the ruling party. For instance, the recently appointed non-judicial members of the SJC were the former Minister of Justice, a Deputy Minister of Justice, and a head of the Investigative Committee. The former Minister of Justice, who became the SJC member, was immediately elected as the SJC chairperson. The civil society was concerned about the effect of such appointments on the functioning of the highest judicial governance body and its impact on judicial independence.

The stakeholders raised concerns as to the practice of disciplinary sanctions applied to judges for criticising the SJC or its individual members. There were several recent cases when the SJC sanctioned judges,

including by dismissal, for expressing publicly their opinions. The disciplinary cases followed the criticism such judges expressed towards the SJC.[39]

Among other problems mentioned by the stakeholders were the following:

1. The salary of court staff remains very low and makes it hard to attract or retain skilled personnel.
2. The high workload of judges exacerbated by the insufficient number of judges in the judicial system (and insufficient court staff whose pay is low) makes judges vulnerable to disciplinary complaints against delays in the administration of justice.

[39] See, among other publications, www.aravot-en.am/2023/02/15/319898, https://iravaban.net/en/420260.html. See also US State Department report on human rights practices in Armenia, www.state.gov/reports/2022-country-reports-on-human-rights-practices/armenia/.

7 Independence of public prosecution service

The selection of the Prosecutor General was not merit-based and competitive; it was influenced by political interests. Some of the grounds for the pre-term dismissal of the Prosecutor General were vague and allowed unfettered discretion. Armenia had no prosecutorial governance bodies in line with the monitoring benchmarks to insulate the prosecution service from political influence. Closed competitions for the positions in the prosecution service and the system of promotion were not transparent and based on merits, leaving too much discretion to the Prosecutor General. In practice, the integrity checks have impacted prosecutorial appointments, which is commendable. However, this needs to be institutionalised into formal selection criteria. The positive experience of selecting prosecutors for the specialised department on civil confiscation should be used to improve the recruitment procedures for other prosecutors. Disciplinary proceedings against prosecutors could be streamlined, in particular, by establishing narrow grounds for liability.

Figure 7.1. Performance level for Independence of Public Prosecution Service is average

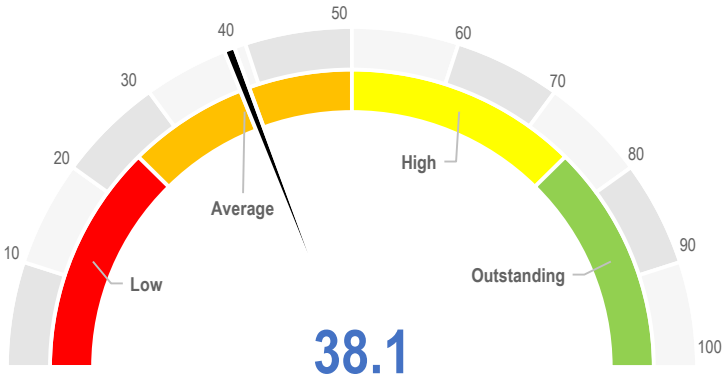
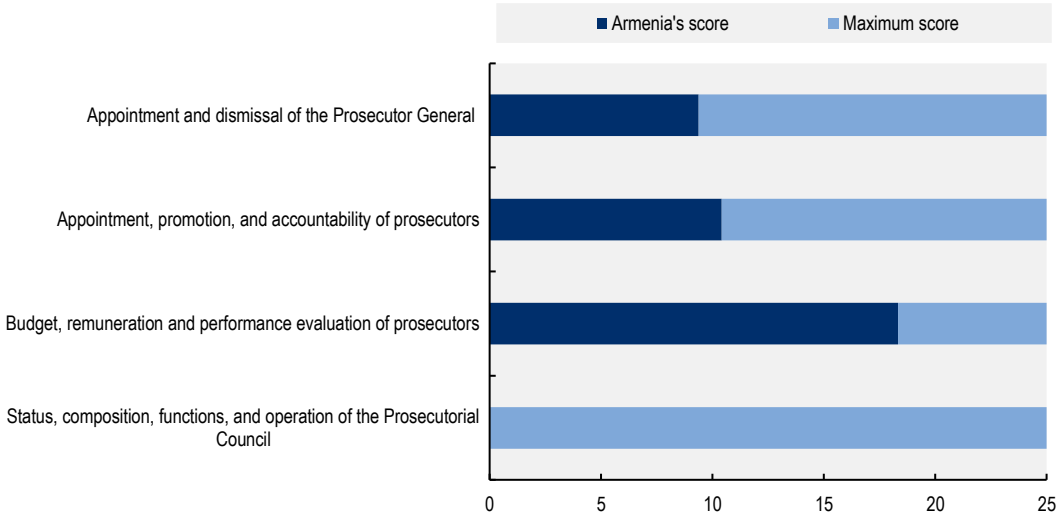


Figure 7.2. Performance level for Independence of Public Prosecution Service by indicators



Indicator 7.1. Prosecutor General is appointed and dismissed transparently and on objective grounds

Background

Appointment and dismissal of the Prosecutor General are regulated in the RA Constitution, the Law on the Prosecutor's Office, and the Constitutional Law on the Rules of Procedure of the National Assembly. The Prosecutor General is elected by the National Assembly, upon recommendation of the competent standing committee of the National Assembly, by at least three-fifths of votes of the total number of Deputies. Factions of the parliament propose each candidate for the position, from which the parliament's standing committee (the Standing Committee on State-Legal Issues) selects one candidate that is proposed to the

parliament. Candidates for the Prosecutor General undergo integrity checking conducted by the Corruption Prevention Commission. A prosecutorial governance body or an expert committee do not participate in the review of candidates for the Prosecutor General.

The grounds for terminating the office of the Prosecutor General are set in the Law on the Prosecutor's Office. Other than for objective grounds (for example, death, attaining the mandatory retirement age, criminal conviction, resignation, etc.), the National Assembly may, in the cases prescribed by the Law on the Prosecutor's Office, remove the Prosecutor General from office by at least three-fifths of votes of the total number of Deputies (see details below).

Assessment of compliance

There was no prosecutorial governance body in Armenia in 2022. Such a body or an independent expert committee did not participate in the selection of the Prosecutor General that happened in 2022. Grounds for dismissal of the Prosecutor General were set in the law, but some of them were not clear enough. The law regulated the dismissal procedure. Transparency of the procedure was ensured through the publicity of the parliament's sittings.

Benchmark 7.1.1.

A prosecutorial governance body or a committee, which is composed of non-political experts (e.g., civil society, academia, law professors, attorneys, human rights defenders), who are not public officials and are not subordinated to any public authorities, reviews the professional qualities and integrity of all candidates for the Prosecutor General and provides its assessment the appointing body:

Element	Compliance
A. The procedure is set in the legislation	X
B. The procedure was applied in practice	X

According to the legislation of Armenia, a prosecutorial governance body or a committee, which is composed of non-political experts (e.g., civil society, academia, law professors, attorneys, human rights defenders), who are not public officials and are not subordinated to any public authorities, did not participate in the review of professional qualities and integrity of candidates for the Prosecutor General's position. The background integrity checks of the candidates conducted by the Corruption Prevention Commission is a commendable practice, but it does not influence compliance with the element. The authorities referred to the provision that the parliament's competent standing committee may engage specialists and experts in its work; however, it is an optional, not institutionalised arrangement that is not mandatory for the review of candidates for the Prosecutor General. Thus, the country is not compliant with **element A**.

In 2022, a new Prosecutor General was elected by the National Assembly due to the expiration of the mandate of the former Prosecutor General. The prosecutorial governance body or an expert committee was not involved in the selection because it was not provided in the legislation, leading to non-compliance with **element B**.

The last election of the Prosecutor General showed the deficiency of the existing system. The person elected as a new Prosecutor General in June 2022 by the National Assembly was an assistant to the current Prime Minister. The new Prosecutor General was elected with 70 votes in favour (out of 107 members of the National Assembly), with all votes given by the ruling "Civil Contract" faction. The opposition factions boycotted the sessions of the National Assembly and did not participate in the voting. According to NGOs, the fact that the candidature was proposed by the representatives of the "Civil

Contract" faction, and only this faction participated in the voting attested to the political nomination and appointment.

Benchmark 7.1.2.

The procedure for pre-term dismissal of the Prosecutor General is clear, transparent, and objective:

Element	Compliance
A. Grounds for dismissal are defined in the law	✓
B. Grounds for dismissal are clear and do not include such grounds as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" unless the legislation breaks them down into more specific grounds	X
C. The law regulates the main steps of the procedure	✓
D. The law requires information about the outcomes of different steps (if there are several steps) of the procedure to be published online	✓

Grounds for dismissal or termination of office of the Prosecutor General are set in the Law on the Prosecutor's Office as required by **element A** of the benchmark. In addition to objective grounds (for example, death, attaining the mandatory retirement age, criminal conviction, resignation, etc.), the Law provides four grounds for early termination: 1) PG has become seriously ill, which hinders or will hinder the performance of his or her duties for a long period of time; 2) PG committed a violation of the law or the rules of conduct of prosecutors, which has impaired the reputation of the Prosecutor's Office; 3) PG violated restrictions and incompatibility requirements; 4) other insurmountable obstacles to the exercise of his or her powers. In these cases, the National Assembly may dismiss the Prosecutor General from office by at least a three-fifths vote of all Deputies.

Grounds for dismissal are considered clear (**element B**) if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body. The law should expressly state all the actions or inaction that can result in dismissal. The grounds should be formulated narrowly and unambiguously, avoiding such general formulations as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" - if such grounds are used, the legislation should break them down into more specific grounds.

From the grounds mentioned above, two are problematic. First, "committing a violation of the law or the rules of conduct of prosecutors, which has impaired the reputation of the Prosecutor's Office" does not clearly provide what violation should be committed and what can be understood as "impairing the reputation of the Prosecutor's Office." Rules of conduct of prosecutors defined in the Law on the Prosecutor's Office are very broad and contain many ambiguous provisions, some of which overlap.[40] According to the authorities, these provisions from the Law are clarified in the rules established by the order of the Prosecutor General of 10 April 2018. The monitoring team reviewed the requirements set by

[40] For example: "to refrain, under any conditions and in any situation, from demonstrating — with his or her activities, practical, professional and moral characteristics — any conduct incompatible with or undermining the high reputation of the Prosecutor's Office, decreasing the public confidence in the Prosecutor's Office or casting doubt on the impartiality, objectivity and independence of the Prosecutor's Office"; "to avoid, under any conditions and in any situation, practical, professional or moral relations or demonstrating any conduct incompatible with the title of the prosecutor that may disgrace the reputation, good fame, honour or dignity of the prosecutor"; "to keep the reputation of the Prosecutor's Office high, inspire respect and confidence in the Prosecutor's Office and in himself or herself with his or her conduct and activities."

the Prosecutor General's Order. They contain a detailed list of the prosecutor's obligations inside and outside the performance of official duties. The law contains several articles on the rules of conduct – general rules of conduct, rules of conduct in official relations, and rules of conduct in extra-official relations. The "requirements" approved by the Prosecutor General regulate the same categories of rules, sometimes in more detail than the law, sometimes adding new elements that are not present in the law.

Regardless of the analysis of these requirements, Article 53 of the Law on the Prosecutor's Office refers to the "violation of the rules of conduct of a prosecutor" as a ground for disciplinary liability and does not mention any additional requirements approved by the Prosecutor General. Article 71 of the Law called "Rules of conduct of prosecutors" mentions that the "rules of conduct of prosecutors shall be prescribed by this Law, and the requirements arising from the rules of conduct established by this Law shall be prescribed upon the order of the Prosecutor General. The rules of conduct of prosecutors shall be binding for all prosecutors." Therefore, the law clearly separates the rules of conduct included directly in the law and "requirements arising from the rules of conduct" set by the Prosecutor General. According to the authorities, the requirements arising from the rules of conduct are always referred to during the disciplinary proceedings and, in practice, their use has never been disputed by prosecutors against whom the proceedings were conducted. However, the monitoring team notes that the law does not explain the status of the said "requirements", does not explicitly require following them, and does not establish that a violation of these "requirements" leads to disciplinary liability. Overall, the additional requirements do not remove the uncertainty (and, in some cases, introduce additional provisions that require interpretation) and do not clarify the rules of conduct set in the law; the disciplinary liability is linked to the rules set in the law and not additional requirements.[41]

The second problematic ground is the ground of "other insurmountable obstacles to the exercise of his or her powers" which is ambiguous and very broad and can include almost anything. The authorities stressed the difficulties for the legislation to provide an exhaustive list of such situations during the existence of which the performance of the General Prosecutor's powers would be impossible.

Armenia is not compliant with the requirements of **element B**.

Element C further requires that the law shall regulate the main steps of the procedure. In this regard, Article 153 of the Constitutional Law on the Rules of Procedure of the National Assembly defines the main steps of the procedure for dismissing the Prosecutor General, including the following: the draft decision on the dismissal can be proposed by the parliament's faction; during discussion of the proposal the Prosecutor General has the right to address the Assembly at its session and answer questions; the Corruption Prevention Commission submits its conclusion regarding alleged violation of incompatibility requirements and the conclusion is also made public; decision on the termination of office through secret ballot by at least three-fifths of the total number of votes of the deputies. Armenia is compliant with **element C**.

According to the authorities, transparency of the dismissal procedure is ensured by the public sittings of the National Assembly and its standing committees and by online broadcasting of the parliamentary hearings. The procedure for the dismissal of the Prosecutor General does not involve many steps; for example, the dismissal proposal is not considered in any standing committees and is submitted directly to a plenary session, which is held openly. Thus, the country is in line with **element D**.

[41] According to the authorities, the Prosecutor General's Office plans to align the internal rules with the guidelines under the Code of Conduct for Public Officials to be approved by the Corruption Prevention Commission.

Benchmark 7.1.3.

	Compliance
There were no cases of dismissal of the Prosecutor General outside the procedure described in benchmark 1.2	N/A

The benchmark is not applicable because there was no dismissal of the Prosecutor General in 2022 (the powers of the former Prosecutor General expired according to the law).

Indicator 7.2. Appointment, promotion, and accountability of prosecutors are based on fair and clear mechanisms

Background

Selection of prosecutors was regulated by the Law on the Prosecutor's Office and Prosecutor General's order. The list of candidates for prosecutors was completed through open and closed competitions. The open competition was held by the Qualification Commission of the Prosecutor's Office once a year. Where necessary, an extraordinary open competition might be held upon the Prosecutor General's decision. To supplement the list of candidates for prosecutors, a closed competition might be held during the year upon the assignment of the Prosecutor General. Promotion of prosecutors was conducted through the promotion lists for appointment to certain levels of the prosecutorial office.

Assessment of compliance

Armenia was not compliant with the benchmarks on the selection and promotion of prosecutors mostly because of the closed competitions existing in parallel to open recruitment and promotion procedures. Also, the Prosecutor General had an excessive amount of discretion when considering proposed candidates. There was no requirement in the Law for the Prosecutor General to base their decision on the candidate's merits and no clear criteria for not accepting proposed candidates. Rejections based on integrity concerns happened several times, and this practice should be institutionalised and provided in the regulations. Grounds for disciplinary liability and for dismissal of prosecutors were stipulated in the Law on Prosecutor's Office, but several grounds for disciplinary liability raised concerns. The authorities were working on improving the prosecution office's internal regulations to provide additional clarity and legal certainty to the proceedings. The main steps of the disciplinary procedure were set in the law, and disciplinary investigation of allegations against prosecutors was separated from the decision-making in such cases as required by benchmarks.

Benchmark 7.2.1.

All prosecutors (except for Deputies Prosecutor General) are selected based on competitive procedures and according to merits:

Element	Compliance
A. All vacancies are advertised online	X
B. Any eligible candidate can apply	X
C. Prosecutors are selected according to merits (experience, skills, integrity)	X

Selection of prosecutors is regulated by the Law on the Prosecutor's Office and Prosecutor General's order. The list of candidates for prosecutors is completed through open and closed competitions. The open competition is held by the Qualification Commission of the Prosecutor's Office once a year. Where necessary, an extraordinary open competition may be held upon the Prosecutor General's decision. To supplement the list of candidates for prosecutors, a closed competition may be held during the year upon the assignment of the Prosecutor General. When considering candidates, the Qualification Commission checks the candidate's professional training, practical skills, awareness of the requirements of the fundamental legal acts related to his status, personal qualities and merits (self-control, behaviour, listening ability, communication skills, analytical abilities, etc.), as well as the conformity of the documents he submitted to the legal requirements. The Qualification Commission also considers the integrity check conclusions provided by the Corruption Prevention Commission. Candidates with a positive conclusion of the Qualification Commission are submitted to the Prosecutor General who has the right to include the submitted applicants on the list of candidates for prosecutors or make a reasoned decision on not including the applicant in the list, which the applicant can appeal in a court of law.

Contrary to the requirements of **elements A and B** of this benchmark, vacancies added through the closed competition are not announced online. The candidates are informed about the competition in writing or through oral invitations. Referring to the closed competition, the authorities noted that special procedures for filling positions in the Prosecutor General's Office were justified to enable the quick filling of vacant positions with personnel who meets specific professional knowledge and work experience that are relevant for the hierarchical and unified system of the prosecution office. However, the argument that specific knowledge and experience is needed for the filling in of some specialized prosecutorial departments' positions is not incompatible with a competitive recruitment procedure in which these specific requirements could be announced in online advertised vacancies. Besides, in the closed competitions, only candidates who were invited in writing or orally can participate as candidates.

The selection by the Qualification Commission is based on merits, as it takes into account the experience, skills and integrity of the candidates (**element C**). However, at the last stage, the Prosecutor General may reject proposed candidates. There is no requirement in the Law for the Prosecutor General to base his decision on the candidate's merits, and no clear criteria are provided for not accepting proposed candidates. There are also no criteria established for the Prosecutor General to select candidates from the list of pre-selected candidates and no ranking or priority of candidates included on such a list based on the selection. In practice, the Prosecutor General has, in several cases, refused the appointment of the proposed candidates because of the negative conclusions of integrity checks conducted by the Corruption Prevention Commission. This is a commendable practice, but it must be institutionalised and included in the regulations as a part of the clear criteria for confirming or rejecting nominations. The current regulation and practice are based on the complete discretion of the Prosecutor General. Thus, Armenia is not in line with **element C**.

The authorities noted that they considered the requirement of the Law to make a reasoned decision of the Prosecutor General on not including the person in the list of candidates for prosecutors a sufficient guarantee to restrain the apparent discretionary authority of the Prosecutor General. However, the monitoring team maintains the view that this choice of the Armenian legislator is not in line with the requirements of the benchmark and that the selection of the prosecutors should be based on clear and transparent criteria, which are known in advance and limit the discretion of the appointing authority.

Benchmark 7.2.2.

All prosecutors (except for Deputies Prosecutor General) are promoted based on competitive procedures and according to merits:

Element	Compliance
A. Vacancies are advertised to all eligible candidates	X
B. Any eligible candidate can apply	X
C. Prosecutors are promoted according to merits (experience, skills, integrity)	X

Promotion of prosecutors is conducted through the promotion lists for appointment to certain level of the prosecutorial office. The promotion lists of prosecutors are compiled by the Qualification Commission upon the order of the Prosecutor General: 1) in the course of regular competency evaluation of prosecutors; 2) on an extraordinary basis, when the Prosecutor General submits to the Qualification Commission a proposal on including a prosecutor in the promotion list by submitting relevant appraisal issued by the Prosecutor General or the Deputy Prosecutor General; the prosecutor is included in the official promotion list of prosecutors upon the positive conclusion of the Qualification Commission following conclusions of the integrity checks conducted by the Corruption Prevention Commission; 3) when the Qualification Commission adopts a decision on including the person, who applied to be included on the list of candidates for prosecutors and is exempt from studies at the Academy of Justice, simultaneously on the list of candidates for prosecutors and list of official promotion.

Contrary to the requirement of **element A**, vacancies for promotion are not announced to eligible candidates and are filled based on the promotion lists depending on the level of position. Persons included in one list cannot apply for a higher position. The Prosecutor General can propose including a prosecutor in the promotion list regardless of the competency evaluation.

The promotion is not competitive, as there is no possibility to apply for a vacancy, as required by **element B** of the benchmark. A prosecutor may only request an extraordinary attestation, after which he/she may be placed on the list for promotion, which, however, is not equivalent to applying to a vacancy for promotion.

The Law on the Prosecutor's Office does not condition the promotion of prosecutors on compliance with certain criteria and does not define on what grounds the Qualification Commission may give a positive or negative opinion to the prosecutor who may be eligible for promotion (**element C**). The results of the competency evaluation are only one ground for inclusion on the promotion list; prosecutors can also be promoted through extraordinary procedures regardless of the evaluation results. There are no criteria for the Prosecutor General to select a prosecutor from among those included on the list for promotion; the decision is fully discretionary. The authorities noted that, regarding the inclusion in the list of official promotions in an extraordinary order, the positive conclusion of the Qualification Committee was required, and there were many cases when the Qualification Commission issued a negative opinion on the prosecutors who were submitted by the Prosecutor General to the Qualification Commission for inclusion in the service promotion list.

In their comments to the assessment under this benchmark, the authorities also noted that they considered the existing promotion system to be based on meritocracy. It takes into account the features of the unified system of the Prosecutor General's Office, including the presence of units with different specializations in the Prosecutor General's Office system. To be included in the relevant promotion list, a prosecutor must have the required work experience and not have a disciplinary penalty, which, in combination with the system of conduct verification, contributes to filling the higher positions with professional, highly qualified prosecutors with integrity. As for the conclusion that a prosecutor included in the promotion list cannot apply for a higher position than is provided in the Law, the existing regulation was due to the features of the unified hierarchical system and aimed at ensuring the consistency and predictability of the career in the Prosecutor's Office.

The monitoring team welcomes the fact that the entries in the promotion list were assessed by the Qualification Commission and that the professional experience and conduct were verified by the Commission. However, the procedure in which the inclusion of a candidate on the promotion list and the non-inclusion of another one was not determined by clear, transparent, and merit-based criteria known in advance does not appear as a competitive procedure, as required by element C of the benchmark. The same lack of objective and merit-based criteria is valid for the selection made by the Prosecutor General on the candidates listed in the promotion list. Armenia is not compliant with **element C**.

According to the authorities, the law adopted on 1 March 2023 amended the Law on the Prosecution Office regarding the creation of the service promotion lists, with the aim of creating a more meritorious promotion system. Nevertheless, the monitoring team has not had the chance to assess the new law, as it fell outside the assessment period.

Benchmark 7.2.3.

Clear grounds and procedures for disciplinary liability and dismissal of prosecutors are stipulated:

Element	Compliance
A. The law stipulates grounds for disciplinary liability and dismissal of prosecutors	✓
B. Grounds for the disciplinary liability and dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds	x
C. The law regulates the main steps of the disciplinary procedure	✓

As required by **element A** of the benchmark, grounds for disciplinary liability and dismissal of prosecutors are stipulated in the Law on Prosecutor’s Office (Articles 53 and 62).

The grounds for dismissal raise no concern as they are mainly based on objective reasons and are sufficiently clear. On the other hand, the grounds for disciplinary liability include 1) failure to perform or improper performance of duties; 2) violation of the rules of conduct of a prosecutor or the regulation on conflict of interests, except for violation of the rule prescribed by point 13 of part 1 of Article 72 of this Law (that is an observance of rules on acceptance of gifts); 3) regular violation of the internal rules of labour discipline; 4) failure to observe the restrictions and incompatibility requirements prescribed by Article 49 of this Law. The first two grounds are problematic because they are vague. **Element B** specifically mentions that “improper performance of duties” should not be a ground for disciplinary liability unless it is further broken down into more specific grounds. Violation of the rules of conduct covers a very broad list of possible misbehaviour formulated in ambiguous terms (see also assessment under benchmark 7.1.2.). Armenia is not compliant with this element.

The authorities informed that a new draft order of the Prosecutor General of the Republic of Armenia defining the procedure for initiating and conducting disciplinary proceedings against the prosecutor was being prepared. The new draft procedure aims to clarify and specify which violations, depending on their nature and severity, could be the grounds for initiating disciplinary proceedings against the prosecutor to reach the international standard.

The Law on the Prosecutor's Office regulates the main steps of the disciplinary proceedings. Although the detailed regulation of the procedure for instituting and carrying out disciplinary proceedings is determined by the Prosecutor General, the Law contains sufficient details about the main steps of the process and, thus, complies with **element C**.

Benchmark 7.2.4.

	Compliance
The disciplinary investigation of allegations against prosecutors is separated from the decision-making in such cases	✓

According to the Law on the Prosecutor's Office, the Prosecutor General institutes the disciplinary proceedings on his or her own initiative, based on the motions of superior prosecutors, based on communications from natural or legal persons, state and local self-government bodies or officials, mass media publications, or based on a court decision on submitting an application with the Prosecutor General for imposing disciplinary action. The Ethics Commission may also institute disciplinary proceedings. The Prosecutor General then sets up an ad hoc disciplinary commission to investigate the allegation. Following the disciplinary investigation, the case is submitted to the Ethics Commission, which decides on the disciplinary violation, prosecutor's guilt, and disciplinary sanction. The Prosecutor General imposes the disciplinary sanction proposed by the Ethics Commission.

Indicator 7.3. The budget of the public prosecution service, remuneration and performance evaluation of prosecutors guarantee their autonomy and independence

Background

In 2022, the prosecution service received 108% of the budgetary allocations from the amount it requested. Representatives of the Prosecutor's Office participated in discussions leading to the approval of the 2022 budget. The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions defined the base salary rate and increments paid to prosecutors. The Law mentioned the monetary reward as an incentive payable to prosecutors with the procedure for assigning such rewards regulated by the Prosecutor General's order of 2018. The performance evaluation of prosecutors was conducted by the Qualification Commission appointed by the Prosecutor General, with a Deputy Prosecutor General chairing the Commission.

Assessment of compliance

The grounds for awarding monetary rewards to prosecutors were too broad, and the authorities started the revision process to further clarify them. The performance evaluation of prosecutors was conducted by the Qualification Commission appointed by the Prosecutor General, with a Deputy Prosecutor General chairing the Commission. When the Qualification Commission reviewed candidates for filling the list for prosecutors

specialised in the confiscation of illegal assets, it included in its composition two experts appointed by the Prosecutor General, including one international anti-corruption expert, which was a positive practice.

Benchmark 7.3.1.

The budgetary funding allocated to the prosecution service:

Element	Compliance
A. Was not less than 90% of the amount requested by the prosecution service or, if less than 90%, is considered sufficient by the prosecution service	✓
B. Included participation of representatives of the prosecution service in consideration of its budget in the parliament or the parliament's committee responsible for the budget, if requested by the prosecution service	✓

According to information provided by the authorities, the Prosecutor's Office requested 6,681,436.80 thousand AMD from the state budget for 2022 and received more funding than requested (7,267,162.80 thousand AMD).

Besides, representatives of the Prosecutor's Office participated in the approval of the 2022 budget. The General Secretary of the RA Prosecutor's Office participated in its discussion.

Armenia is compliant with both elements of this benchmark.

Benchmark 7.3.2.

The law protects the level of remuneration of prosecutors and limits discretion:

Element	Compliance
A. The law stipulates guarantees protecting the level of remuneration of prosecutors (70%) OR The level of remuneration is stipulated in the law (100%)	100%
B. If there are additional discretionary payments, they are assigned based on clear criteria	X

The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions defines the base salary rate and increments paid to prosecutors. As the level of remuneration is stipulated in the law, Armenia is compliant with **element A** with 100% of its score.

Element B of the benchmark requires that if there are additional discretionary payments, they shall be assigned based on clear criteria. The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions mentions the monetary reward as one of the incentives that could be awarded to prosecutors, but the procedure for assigning such rewards is regulated by the Prosecutor General (order no. 31 of 2018). The authorities acknowledged that the grounds for awarding monetary rewards to prosecutors provided in the said order were broad and informed that the work was underway to further clarify them. The monitoring team agrees that the grounds for awarding incentives are quite broad,[42] and

[42] Article 52 of the Law: "for long-term service (term of office) or for excellent performance of official duties and special tasks"; paragraph 11 of the Order: "performed their official duties or special assignments excellently, who have achieved work accomplishments as a result of the performance of their official duties, or who have achieved excellent results in solving the problems within the scope of their activities."

there are no clear criteria in the law nor in the Order on when a monetary reward and not another type of incentive could be awarded and how “excellent performance” is measured.

In 2022, 55 prosecutors received individual monetary rewards. The authorities mention that, in practice, the monetary incentives were granted as "a result of the adoption of decisions by the prosecutor that were of essential and central importance for the criminal proceedings or the confiscation of illegal assets." They provided the following examples of prosecutors who received a reward: the prosecutor who had concluded the first settlement agreement in the proceedings of confiscation of illegal assets; the prosecutor in charge of overseeing the legality of pre-trial proceedings in the Anti-Corruption Committee, who sent a criminal case for money laundering to the court; the prosecutor from the Department of State Interests Protection who had discovered a particularly large amount of damage caused to the state. In the monitoring team’s opinion, these actions may merit recognition, but clear criteria are not provided in the legislation as required in the benchmark. **Element B** is not compliant.

The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions also stipulates that the Prosecutor's Office is provided with a bonus fund of up to 30% of the salary fund and, according to the Prosecutor General’s Office, all prosecutors received such a bonus equally in the amount of 30% of the base salary rate (except for prosecutors sanctioned for a disciplinary offence). As these payments are distributed equally to all prosecutors, they are not considered discretionary payments.[43]

Benchmark 7.3.3.

Performance evaluation of prosecutors is carried out by:

Element	Compliance
A. Prosecutorial bodies (70%)	A (70%)
B. Prosecutorial Council or another prosecutorial governance body (100%)	

A “prosecutorial governance body” means a Prosecutorial Council or another body that is set up by the Constitution or law is institutionally independent from the executive and legislative branches of government and, not formally subordinated to the Prosecutor General, and has a mandate defined by the law. In this definition, “not formally subordinated” means that the Prosecutor General or his/her deputies do not chair the respective body, do not appoint or dismiss its members, do not approve its decisions, or play a decisive role in its decision-making in another form, as well as have no authority to supervise or control its operation, and “mandate” means the authority to perform specific tasks. A “prosecutorial body” means any body within the prosecution service other than a prosecutorial governance body.

The benchmark requires the Prosecutorial Council or another prosecutorial governance body to be responsible for conducting performance evaluations of prosecutors. The respective body should analyse and assess data on the performance of work by individual prosecutors and, depending on the system, approve a rating, score, conclusion or opinion on their performance.

Under the Law on the Prosecutor’s Office of the Republic of Armenia (Art. 50), the competency evaluation of prosecutors is carried out to determine the compliance of professional knowledge, practical and work skills of prosecutors with the position occupied, as well as for the purpose of official promotion. Prosecutors must participate in competency evaluation once every three years. An extraordinary competency

[43] The Government further informed that, from 1 January 2023, the base salary increased by 25.79 percent and bonus funds were reduced from 30 percent to 14 percent. As a result, discretionary bonus funds were reduced.

evaluation of a prosecutor may be carried out upon the Prosecutor General's order supported by the reasoned decision or on the prosecutor's request.

The Law, however, excludes a number of prosecutors from the competency evaluation, including heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, Deputy Military Prosecutors, prosecutors of administrative districts of the city of Yerevan, prosecutors of marzes, military prosecutors of garrisons, senior prosecutors of the General Prosecutor's Office.

The competency evaluation is conducted by the Qualification Commission. The Qualification Commission comprises nine members: the Rector of the Academy of Justice, one Deputy Prosecutor General, four prosecutors, and three academic lawyers appointed by the Prosecutor General. The Deputy Prosecutor General chairs the Qualification Commission. When the Commission reviews candidates for filling the list of prosecutors specialised in the confiscation of illegal assets, it also includes in its composition two experts appointed by the Prosecutor General (one of the experts should be an international anti-corruption expert). As the Commission is appointed by the Prosecutor General and the Deputy Prosecutor General chairs the Commission, it does not qualify as a prosecutorial governance body, but it qualifies as a prosecutorial body.

Because the Qualification Commission does not qualify as a prosecutorial governance body under the monitoring definitions and the performance evaluation is conducted by a prosecutorial body, as explained above, the country is compliant with **element A** with 70% of the score.

Indicator 7.4. The status, composition, functions, and operation of the Prosecutorial Council guarantee the independence of the public prosecution service

Background

There was no Prosecutorial Council in Armenia in 2022.

Assessment of compliance

Two bodies that operated in the prosecution system (the Ethics Commission and the Qualification Commission) did not qualify as prosecutorial governance bodies according to the definition used for this monitoring. Most members of these commissions were appointed by the Prosecutor General, and the Deputy Prosecutors General chaired the commissions. Therefore, Armenia was not compliant with the benchmarks of this indicator.

Benchmark 7.4.1.

	Compliance
The Prosecutorial Council and other prosecutorial governance bodies function based on the Constitution and/or law that defines their powers	X

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.2.

The majority of the Prosecutorial Council and other prosecutorial governance bodies is composed of prosecutors who:

Element	Compliance
A. Are elected by their peers	X
B. Represent all levels of the public prosecution service	X

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.3.

	Compliance
The composition of the Prosecutorial Council and other prosecutorial governance bodies includes at least 1/3 of non-prosecutorial members with voting rights who represent non-governmental stakeholders (e.g., civil society, academia, law professors, attorneys, human rights defenders)	X

Because there was no Prosecutorial Council in the assessment period, , the country is not compliant with the benchmark.

Benchmark 7.4.4.

The decisions of the Prosecutorial Council and other prosecutorial governance bodies:

Element	Compliance
A. Are published online	X
B. Include an explanation of the reasons for taking a specific decision	X

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.5.

The Prosecutorial Council or other prosecutorial governance bodies play an important role in the appointment of prosecutors:

Element	Compliance
A. The Prosecutorial Council or another prosecutorial governance body directly appoints prosecutors. The role of the Prosecutor General (if involved at all) is limited to endorsing the Council's decision without the possibility of rejecting it (100%) OR	X
B. The Prosecutorial Council or another prosecutorial governance body prepares a proposal on the appointment of a prosecutor that is submitted to the Prosecutor General, that may reject it only in exceptional cases on clear grounds explained in the decision (70%) OR	
C. The Prosecutorial Council or another prosecutorial governance body reviews all candidates for the position of a prosecutor and makes a justified recommendation to the relevant decision-making body or official (50%)	

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.6.

The Prosecutorial Council or other prosecutorial governance bodies play an important role in the discipline of prosecutors:

Element	Compliance
A. The Prosecutorial Council or another prosecutorial governance body directly applies disciplinary measures or proposes disciplinary measures to the relevant decision-making official that can be rejected only in exceptional cases on clear grounds explained in the decision	X
B. If the Prosecutor General is a member of the Prosecutorial Council or other prosecutorial governance bodies dealing with disciplinary proceedings, he or she does not participate in decision-making on the discipline of individual prosecutors	X

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Assessment of non-governmental stakeholders

The non-governmental stakeholders made the following suggestions for reforms in the areas covered by the monitoring under this Performance Area:

1. Strengthen the guarantees of independence of the Prosecutor General by revising the selection process and ensuring its competitiveness, considering extension of the term of office, reviewing the statutory grounds for early termination of the Prosecutor General's powers in order to exclude the possibility for discretionary assessment, and restricting the appointment of candidates who have been engaged in political activity or held a political position in the past 2-3 years.

2. Consider the creation of a collegial body of prosecutorial self-governance or revision of the order and composition of the existing collegial bodies in order to ensure the autonomy and independence of prosecutors.
3. Limit the scope of discretion of the Prosecutor General in the process of appointment and promotion of prosecutors by setting additional criteria by law.
4. Increase the transparency and predictability of the disciplinary proceedings against prosecutors by reviewing the respective grounds and procedures.

The non-governmental stakeholders highlighted the positive practice of selection of prosecutors of the specialised department in the Prosecutor General's Office dealing with the civil confiscation of illicit origin property. The selection commission included an independent expert nominated by international organizations. The selection process involved an in-depth analysis of the integrity of candidates.

8 Specialized anti-corruption institutions

The anti-corruption investigative jurisdiction and institutional set-up have been significantly strengthened in Armenia during the past two years. The Anti-Corruption Committee started operating in 2021, supported by the new dedicated department in the Prosecutor's General Office. The head of the Anti-Corruption Committee was selected through an open process, which, however, was criticised for the narrow pool of qualified candidates who participated in the selection. Institutional reform was ongoing, and the new anti-corruption institutions must further strengthen their capacity and transparency. There was no dedicated agency, unit, or staff in Armenia for identifying and tracing criminal proceeds and managing seized and confiscated assets.

Figure 8.1. Performance level for Specialized Anti-Corruption Institutions is high

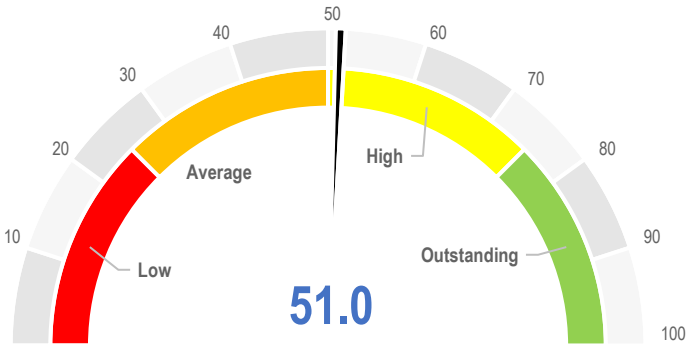
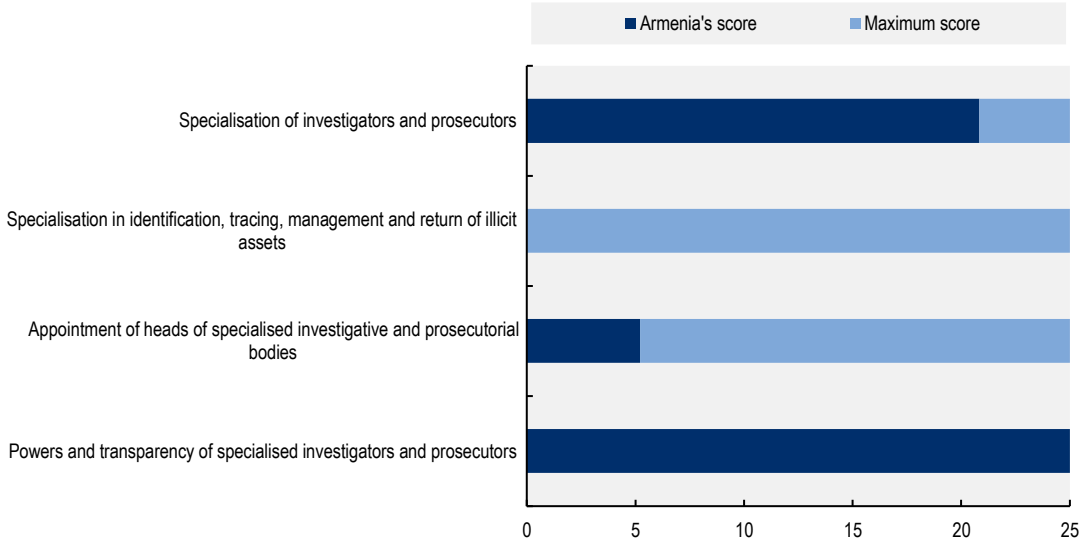


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators



Indicator 8.1. The anti-corruption specialisation of investigators and prosecutors is ensured

Background

The anti-corruption investigative jurisdiction and institutional set-up have been significantly revised in Armenia during the past two years. The new Criminal Procedure Code was adopted in 2021 and enacted (with certain exceptions) in July 2022. The Code determined two pre-trial investigation bodies – the Investigative Committee and the Anti-Corruption Committee (ACC). The Law on the Anti-Corruption Committee was adopted in 2021, and the ACC started its operation in October 2021. According to the Criminal Procedure Code's transitional provisions, different rules on the investigative jurisdiction should be

applied before 1 January 2023, during 2023, and starting from 1 January 2024, when all corruption offences will be investigated exclusively by the ACC. During 2022, the ACC had the investigative jurisdiction to investigate all corruption offences except for bribery and abuse of office in the private sector and some other limited exceptions (including the assignment of investigative authority for crimes committed by the ACC officers to the National Security Service).

Assessment of compliance

Investigation of corruption offences was assigned to the Anti-Corruption Committee set up in 2021. Regarding other crimes, the ACC had the authority to conduct a preliminary investigation if they were committed in combination with corruption crimes. In 2022, the Criminal Procedure Code established an exceptional nature of the possible transfer of cases from the ACC, but the ground for transfer ("as a last resort to ensure a proper, comprehensive, and impartial preliminary investigation") was subject to a very broad interpretation. At the same time, the information available to the monitoring team did not indicate there was any abuse of the power to transfer cases outside of the ACC or to different investigators. Armenia had a specialized prosecutorial body to oversee anti-corruption investigations and present such cases in court – a Department for Supervision over Legality of Pre-trial Proceedings in the Anti-Corruption Committee with the Prosecutor General's Office. The Department oversaw the legality of the preliminary investigation carried out by the Anti-Corruption Committee and supported the prosecution in court in these cases.

Benchmark 8.1.1.

Investigation of corruption offences is assigned in the legislation to a body, unit or a group of investigators which specialise in combatting corruption:

Element	Compliance
A. There are investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (70%) OR	B (100%)
B. There is a body or unit of investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (100%)	

Investigation of corruption offences is assigned to the Anti-Corruption Committee set up in 2021. Regarding other crimes, the ACC has the authority to conduct a preliminary investigation if they are committed in combination with corruption crimes. In 2022, investigators of the Anti-Corruption Committee investigated 1,203 criminal cases (proceedings). Thus, the country is compliant with **element B** with 100% of the score.

Benchmark 8.1.2.

Jurisdiction of the anti-corruption body, unit, or a group of investigators specified in 1.1, is protected by legislation and observed in practice:

Element	Compliance
A. The legislation does not permit corruption cases to be removed from the specialised anti-corruption body, unit, investigator, or allows it only exceptionally, based on clear grounds established in the legislation	X
B. There were no cases of transfer of proceedings outside legally established grounds	✓

According to Article 37 of the Criminal Procedure Code, during the pre-trial proceedings, a superior prosecutor shall transfer, by his decision and in accordance with the rules of investigative jurisdiction prescribed by this Code, the proceedings to another Body of Preliminary Investigation to ensure comprehensive and impartial preliminary investigation. There is also a special rule in part 16, point 16, Article 483 of the Criminal Procedure Code, which was applicable during 2022, that "in exceptional cases, the Prosecutor General has the power to instruct another preliminary investigation body to continue the investigation in the proceedings conducted by the investigator of one preliminary investigation body, if it is necessary as a last resort to ensure a proper, comprehensive and impartial preliminary investigation." This provision establishes an exceptional nature of the possible transfer of cases from the ACC, but it does not provide for clear grounds for such a transfer. The ground "as a last resort to ensure a proper, comprehensive and impartial preliminary investigation" is subject to an extensive interpretation. As noted in the Guide, the rules have to set an exhaustive list of objective grounds for removing cases, i.e., grounds not based on personal preferences or other undue considerations (e.g., interference of political bodies). According to the general definition of the monitoring framework, criteria or grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body. The authorities noted that, in practice, the change of investigative subordination by the Prosecutor General as a last, exceptional measure existed for preventing situations of conflict of interests when, for instance, the investigative body carrying out criminal proceedings itself reports on the situation of a possible conflict of interests of the investigator of this investigative body or a person who is in close relations with the head of the investigative body.

No clear grounds are also established in the legislation for removing a case from one investigator to another within the ACC. According to Article 38, Part 1, Paragraph 13 of the Criminal Procedure Code, in case of a gross violation of the law during the criminal proceedings, the supervising prosecutor removes the investigator from participating in the given proceedings but cannot make a decision to appoint another person in his/her place. In this case, the head of the investigative body decides which of the investigators under his/her direct authority to assign to perform the preliminary investigation of criminal proceedings. In practice, the transfer of criminal proceedings from one investigator to another is carried out by the reasoned report of the investigator and the written instruction of the head of the investigative body. Moreover, if the investigator does not agree with this assignment of the head, he/she can submit objections to the supervising prosecutor, and the latter must decide in this regard within three days. The monitoring team considers that the ground of "a gross violation of the law" does not qualify as clear ground under the monitoring's definition.

Therefore, Armenia is not compliant with **element A**.

In 2022, the investigators of the Anti-Corruption Committee sent 307 criminal cases to another preliminary investigation body in accordance with the rules of the investigative jurisdiction established by the Criminal Procedure Code. During the same period, one criminal case, by the decision of the Prosecutor General of

the Republic of Armenia, was removed from the proceedings of the investigators of the Anti-Corruption Committee as an exceptional measure and transferred to the investigators of another preliminary investigation body - the Investigative Department of the National Security Service according to paragraph 16 of part 16 of Article 483 of the Criminal Procedure Code. In 2022, the ACC investigator was removed from criminal proceedings in six cases, and the preliminary investigation of these criminal cases was assigned to other investigators of the ACC. As there were no cases of transfer of proceedings outside legally established grounds, the country complies with **element B**.

Benchmark 8.1.3.

Prosecution of corruption offences is conducted by a body, unit or a group of prosecutors which specialise in combatting corruption:

Element	Compliance
A. There is a body, unit, or a group of prosecutors with a clearly established mandate to supervise or lead the investigation of corruption cases as the main focus of activity	✓
B. There is a body, unit, or a group of prosecutors with a clearly established mandate to present corruption cases in court as the main focus of activity	✓

In the system of the Prosecutor General's Office, there is a Department for Supervision over Legality of Pre-trial Proceedings in the Anti-Corruption Committee. It was formed in connection with the creation of the Anti-Corruption Committee. The Department oversees the legality of the preliminary investigation carried out by the Anti-Corruption Committee and supports the prosecution in court in these cases. Armenia is compliant with both elements of the benchmark.

Indicator 8.2. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Background

According to the authorities, the identification and tracing of criminal proceeds in corruption cases is conducted by the Anti-Corruption Committee. However, benchmarks of this indicator require that there is a dedicated body, unit or group of specialists to perform these functions. It means that there should be an agency, a unit within the agency, or specialized staff that deals exclusively with these functions and does not perform other duties. No such agency, unit, or specialists exists in Armenia – neither for the identification and tracing of criminal proceeds nor for the management of seized and confiscated assets.

In the system of the Prosecutor General's Office of the Republic of Armenia, there is a specialized Department for the Confiscation of Property of Illegal Origin, which, on the basis of the Law on Civil Forfeiture of Illicit Assets, performs functions aimed exclusively at the confiscation of property of illegal origin. This activity is carried out outside of criminal proceedings. By the Order of the Prosecutor General, the relevant departments of the Prosecutor General's Office are instructed to send monthly to the Department for the Confiscation of Property of illegal Origin information on corruption crimes and those crimes that may result in income of illegal origin (for example, drug trafficking). As a result, prosecutors of the Department for the Confiscation of Property of Illegal Origin file a civil lawsuit with a claim for the recovery of property of illegal origin.

Assessment of compliance

The Department for Confiscation of Illicit Assets was established in 2020 to conduct financial investigations to trace and recover assets. However, its competence was restricted to the recovery of assets in civil proceedings. There were no specialised practitioners or entities responsible for the identification, tracing, or management of recovered assets in criminal corruption cases, as required by this indicator.

Benchmark 8.2.1.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including from corruption (asset recovery practitioners), functions in practice	X

In 2022, there were no specialised practitioners or entities responsible for the identification, tracing, or management of recovered assets in criminal corruption cases, as required by the benchmark.

Benchmark 8.2.2.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the management of seized and confiscated assets in criminal cases, including corruption, functions in practice	X

In 2022, there were no specialised practitioners or entities dealing with the management of seized and confiscated assets in criminal cases, including corruption, as required by the benchmark.

Indicator 8.3. The appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based, with their tenure in office protected by law

Background

The specialised anti-corruption investigative body in Armenia is the Anti-Corruption Committee which was set up in 2021 based on the special law. Oversight over pre-trial investigation and prosecution of corruption cases in court is conducted by the specialised department of the Prosecutor General's Office that is regulated by the Law on the Prosecutor's Office.

Assessment of compliance

The head of the Anti-Corruption Committee, who held the position during this monitoring in 2023, was appointed in 2021, and no new selection was held during the evaluation period in 2022. Accordingly, the relevant benchmark was not applicable, but the report contains suggestions for improvement of the existing procedure. The procedure for pre-term dismissal of the ACC head was found to be deficient: while the grounds for dismissal were included in the law, several of them were not clearly formulated; the law also did not regulate the main steps for the dismissal. There was no special procedure for appointing the Head of the Prosecutor General's Office Department for Supervision over Legality of Pre-Trial Proceedings in

the Anti-Corruption Committee. The only peculiarity was that before the appointment, the candidate had to pass an integrity check, which is a commendable practice.

Benchmark 8.3.1.

The head of the anti-corruption investigative body, unit, or group of investigators, which specialises in investigating corruption, is selected through the following selection procedure in practice:

Element	Compliance
A. The legislation regulates the main steps in the process	N/A
B. The information about the outcomes of the main steps is published online	N/A
C. The vacancy is advertised online	N/A
D. The requirement to advertise the vacancy online is stipulated in the legislation	N/A
E. Any eligible candidates could apply	N/A
F. The selection is based on an assessment of candidates' merits (experience, skills, integrity) in legislation and in practice	N/A

The current head of the Anti-Corruption Committee was appointed in 2021, and no new selection was held during the evaluation period in 2022. As this benchmark is about the practice that happened in the assessment period, all listed elements are not applicable**.** However, the monitoring team provides the analysis below for a possible improvement of the procedure in the future.

The open and competitive selection of the Head of the Anti-Corruption Committee is regulated by the Law on the ACC that defines the main steps of the process, including setting up the Competition Board, its operation, announcing an open competition for the position, assessment of candidates in several stages, proposing to the Government two or three candidates for the position, appointment by the Cabinet of Ministers.

According to the ACC Law, only the following information on the selection process should be published online: an announcement about the open competition and the list of winning candidates selected by the Competition Board. The following information on the outcomes of the main steps of the procedure is not published: the list of applicants who were admitted to the competition following the initial review of documents; results of the integrity checks of the candidates; results of the assessment during the interviews; assessment of candidates by the individual members of the Competition Board.

The online advertisement of the vacancy is stipulated in the ACC Law. No restrictions for eligible candidates to apply are provided in the ACC Law. However, the term of 10 days to submit an application set in the Law may be considered too short.

During the interviews, the Competition Board is supposed to check the leadership and managerial skills required for holding the position and other personal characteristics (self-control, conduct, the ability to listen, communication skills in official and non-official relations, the ability to analyse etc.), as well as the skills of handling the situation spontaneously within a short period of time-based analysis of a legal issue that is given during the interview. The scoring of candidates under the 100-point system is regulated by the decision of the Competition Board.[44] Each Board member assigns points to the candidates under the following three assessment categories: 1) personal qualities (maximum 30 points); integrity (maximum 40 points); and 3) professional experience and skills (maximum 30 points). The candidate's score obtained as a result of the competition is considered to be the sum of the scores of all members of the Board. Three candidates who received the maximum number of points are included in the list of winners of the competition. The merit-based selection is provided at the level of the Competition Board, while the final

[44] Decision No. 2 of 26.07.2021, https://www.gov.am/u_files/file/Voroshum-03_08_21.pdf.

decision of the Government to select one of three candidates is discretionary and can be guided by political or other considerations. It would be preferable to limit the Board's proposal to one candidate who received the highest score and satisfied the integrity criteria.

Benchmark 8.3.2.

The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators, which specialise in investigating corruption, is clear, transparent, and objective:

	Element	Compliance
A.	Grounds for dismissal are defined in the law	✓
B.	Grounds for dismissal are clear and do not include such grounds as "breach of oath", "improper performance of duties", or "loss of confidence or trust" unless the legislation breaks them down into more specific grounds	x
C.	The law regulates the main steps of the procedure	x
D.	The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online	x

This benchmark is based on the assessment of the ACC Law. As foreseen by **element A**, the ACC Law (Article 24) defines the grounds for dismissal of the head of the Anti-Corruption Committee and it includes the following: attaining the maximum age for holding the position; loss of citizenship of the Republic of Armenia; being declared as having no active legal capacity, as missing or dead; death; court judgment of conviction entered into legal force; decision on terminating criminal prosecution on non-acquittal grounds or on not initiating criminal prosecution; resignation. The second set of grounds includes the following: a disease or physical impairment which hinders or will hinder the performance of duties over a long period of time; any of the restrictions prescribed by part 2 of Article 15 of the ACC Law have emerged; violating the restrictions and incompatibility requirements prescribed by the Law "On public service"; violating the prohibition to engage in political activities; "facts that he or she did not comply with the specified requirements at the time of his or her appointment have emerged."

However, some of the grounds for dismissal are not clear. One of the grounds refers to part 2 of Article 15 of the ACC Law, which includes a broad list of restrictions, including "a criminal prosecution has been initiated" and "is a prosecutor, investigator who has received - during the last three years - a severe reprimand or a graver disciplinary penalty prescribed by law, irrespective of whether the disciplinary penalty has been expired or cancelled under the established procedure." The first ground allows dismissing the ACC head by starting any criminal investigation against him or her. The second ground allows the dismissal through the application of a disciplinary penalty. Unlike another ground in Article 24 (non-compliance "with the specified requirements at the time of his or her appointment have emerged"), which is linked to the situation at the time of selection and cannot be used for newly emerged circumstances, these grounds, when read literally, allow applying restrictions in Article 15, part 2, when they appear during the tenure of the ACC head.

The ground "violating the prohibition to engage in political activities" is also ambiguous. The authorities referred to Article 9 of the ACC Law that prohibits employees of the ACC from being a member of any party or engaging in political activities in any other way and requires that employees of the ACC show political restraint and neutrality under all circumstances. If being a member of a party is sufficiently specific, the other conditions are too broad. Thus, Armenia is not compliant with **element B**.

Contrary to the requirement of **element C**, the law does not regulate the main steps for the dismissal of the Anti-Corruption Committee's head. Some of the grounds are objective but still require a formal decision of the Government. Other grounds allow interpretation (for example, violating the prohibition to engage in political activities), and the law should stipulate who may initiate the consideration of the dismissal and

how it is conducted and resolved. The steps are not regulated; therefore, no publication of outcomes is provided contrary to **element D**.

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	N/A

There was no dismissal of the Anti-Corruption Committee's head in 2022. The benchmark is not applicable.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

Element	Compliance
A. The legislation regulates the main steps in the process	✓
B. The information about the outcomes of the main steps is published online	X
C. The vacancy is advertised online	X
D. The requirement to advertise the vacancy online is stipulated in the legislation	X
E. Any eligible candidates could apply	X
F. The selection is based on the assessment of candidates' merits (experience, skills, integrity)	X

There is no special procedure for appointing the Head of the Prosecutor General's Office Department for Supervision over Legality of Pre-Trial Proceedings in the Anti-Corruption Committee. The only peculiarity was that before the appointment, in accordance with the procedure established by law, the person passed integrity check. The procedure for promotion to senior prosecutorial positions is regulated by the Law on the Prosecutor's Office (see the assessment of the promotion procedures in the prosecutor's office in Performance Area 7). There is a separate promotion list that includes candidates for the heads of the structural subdivisions of the General Prosecutor's Office (which includes PGO departments), the Prosecutor of the city of Yerevan, and the Deputy Military Prosecutor. No special procedure is provided for the candidates for the PGO Department dealing with corruption cases. Armenia is compliant only with **element A** of the benchmark.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Background

The Anti-Corruption Committee was authorised to perform undercover investigative actions according to the Criminal Procedure Code and carry out operational investigative activities according to the Law on Operational Investigative Activities. Access to tax, customs, and bank data was obtained through a seizure of documents and items containing banking or related secrets, as well as the demand for information.

Assessment of compliance

No issues were reported in the ACC's ability to implement its powers to use special investigative techniques and conduct undercover operations, as well as to access tax, customs, and bank data. Detailed statistics related to the work of the anti-corruption investigators and prosecutors was published online annually as a special report of the Prosecutor General.

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

The Anti-Corruption Committee is authorised to perform undercover investigative actions according to the Criminal Procedure Code and carry out operational investigative activities according to the Law on Operational Investigative Activities. The undercover investigative actions include: indoors surveillance (covert surveillance); outdoor surveillance; monitoring of mail correspondence and other non-digital communication; monitoring of digital, including telephone communication; monitoring of financial transactions; simulation of taking or giving a bribe. As a part of operational measures, the ACC is authorised to conduct the following: an operational survey, collection of operational information, collection of samples for comparative studies, control of procurement, controlled delivery and procurement, examination of objects and documents, external surveillance, internal (covert) surveillance, identity detection, research of buildings, structures, terrain, buildings, and vehicles, control of correspondence and other non-digital communications, control of digital, including intercept communications, operational implementation, operational experiment, control of financial transactions, imitation of receipt or giving bribes. From the information provided in writing and during the on-site visit, it appears that these powers were implemented in practice, and thus, the country is compliant with **element A**.

As regards the powers of the Anti-Corruption Committee to access tax, customs, and bank data, it is obtained through a seizure of documents and items containing banking or related secrets, as well as the demand for information. According to part 5 of Article 26 of the Criminal Procedure Code, during the proceedings, information concerning a person containing medical (with the exception of seeking medical help and service or data on its receipt), notarial, bank, or related secrets may be collected only through a court decision in cases and in accordance with the procedure established by law. Armenia is compliant with **element B**.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	✓
C. A number of terminated investigations with grounds for termination	✓

The authorities refer to the annual report published on the website of the Prosecutor General's Office (LINK). It contains detailed information on the investigation and prosecution of corruption crimes, including a number of registered criminal proceedings/opened cases (**element A**), a number of persons whose cases were sent to court (**element B**), and a number of terminated investigations (**element C**). The ACC also publishes annual reports on its activity (https://anticorruption.am/hy/pages/show/report).

Assessment of non-governmental stakeholders

The non-governmental stakeholders provided the following recommendations for improving the independence and operation of the specialized anti-corruption bodies:

1. Remove the possibility for the head of the Anti-Corruption Committee to be appointed to the position twice in a row while extending his/her term in office.
2. Revise the procedure for appointing and dismissing the deputy heads of the Anti-Corruption Committee, excluding the participation of the executive and reserving this power to the ACC head.
3. Establish specified procedures and guarantees for the disciplinary proceedings of the Anti-Corruption Committee officials, as well as the requirement for an independent disciplinary committee to organize the disciplinary proceedings.
4. Increase accountability and transparency of the work of the Anti-Corruption Committee by improving reporting to the Government and the National Assembly, submitting interim reports when needed.
5. The ACC should improve its communication about high-profile cases, as often, after announcing the case investigation, the ACC does not follow up and inform the public about the outcomes of the investigation.
6. Publish regular and disaggregated statistics on the work of the anti-corruption investigators, highlighting the results of an investigation in high-level corruption cases. Publish reports, including reports of the Prosecutor General, on the investigation and prosecution of corruption cases in an open data format to facilitate access and use of data.
7. Increase the number of autonomous positions of the Committee and the number of positions intended for persons performing operative-investigative functions.
8. Build the capacity of the Anti-Corruption Committee through continuous training of its employees.
9. Ensure adequate premises, material and technical supply of the Committee, to create its territorial units.
10. Increase the number of prosecutors dealing with cases of the Anti-Corruption Committee.

11. Provide continuous training to the specialised prosecutors to develop their capacity to supervise the pre-trial criminal proceedings carried out by the Anti-Corruption Committee.

The stakeholders also recommended limiting the discretion of the Prosecutor General in dealing with corruption cases and detaching to a certain extent the anti-corruption prosecutors from the general centralised system of the PGO, for example, by designating a special Deputy Prosecutor General who would be selected through an open competitive process.

As to the selection of the ACC head, stakeholders welcomed the open process that included observers from NGOs and international partners, the US Embassy in Armenia in particular, who could ask questions to the candidates and present their observations. However, the stakeholders believed that the selection procedure was not optimal due to a limited number of qualified candidates and insufficient public promotion of the competition to attract more qualified candidates, which resulted in the selection of the former head of the Special Investigative Service as the head of the ACC. As the pool of candidates for the ACC head was narrow, the selection was not genuinely competitive.

9 Enforcement of Corruption Offences

The liability for corruption offences was enforced, but the number of convictions in 2022 was low. There was only one case of conviction of a high-level official (a judge) and no cases of confiscating corruption proceeds. There were no convictions for money laundering with corruption as a predicate offence or standalone money laundering. Civil confiscation of property of illicit origin (unjustified assets) was a new promising instrument that has been actively enforced, with the first confiscation orders expected in 2023. Another important step was the introduction of the criminal liability of legal persons by the new Criminal Code enacted in 2022. The annual report of the Prosecutor General on the prosecution of corruption crimes was a good practice example of collating and publishing criminal statistics; the report's usability could be improved by publishing it in an open data format.

Figure 9.1. Performance level for Enforcement of Corruption Offences is average

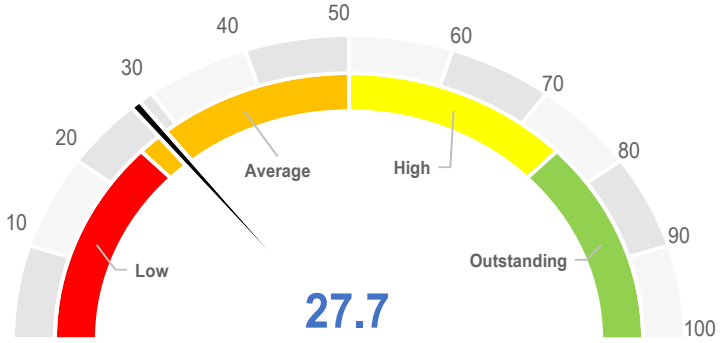
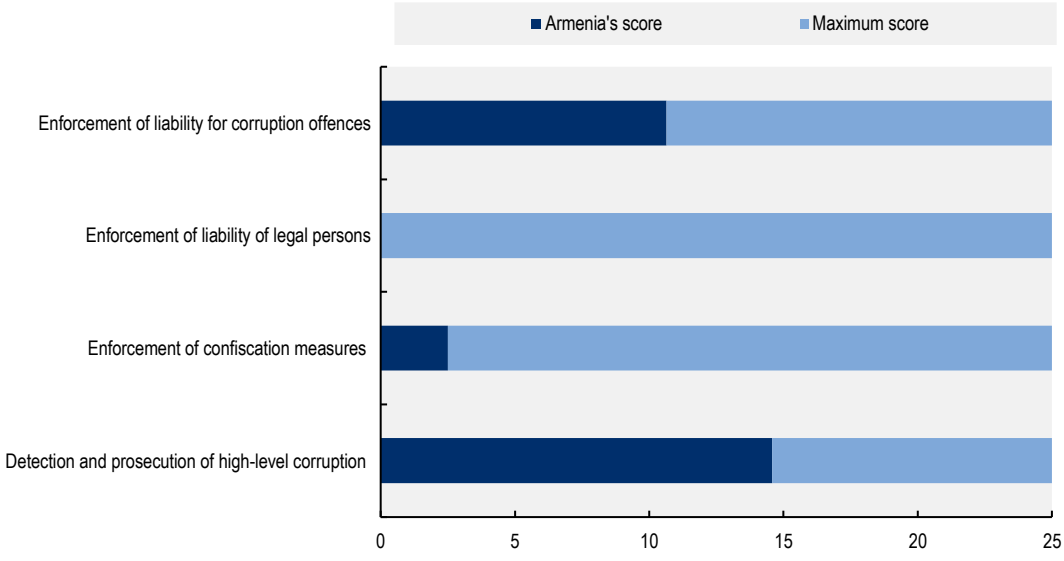


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators



Indicator 9.1. Liability for corruption offences is enforced

Background

This indicator tracks the enforcement of corruption offences through criminal sanctions. In most cases, its benchmarks require that sanctions for offences be "routinely imposed," meaning that the national authorities must provide at least three examples of specific cases of the first instance convictions delivered in 2022 for the respective offences.

Assessment of compliance

Enforcement statistics for 2022 showed that there were more convictions for active bribery than passive bribery in the public sector, which may indicate that more focus should be put on investigating offences of bribe-taking and solicitation by public officials. There were no convictions for bribery in the private sector, trafficking in influence, or illicit enrichment. Newly introduced civil confiscation of unjustified assets was actively pursued, with over 20 claims already filed in courts in the total amount of about 52 billion AMD; no court decisions on civil confiscation were delivered in 2022. No investigation of foreign bribery was started in 2022. There were also no convictions for money laundering with public sector corruption as a predicate offence and convictions for standalone money laundering, but reportedly, many cases of money laundering related to former public officials had been launched. Enforcement statistics on corruption offences were collected on the central level and published in the annual reports on the official website of the General Prosecutor's Office in a comprehensive manner (excluding only data on the confiscation measures applied). Recognizing that these specialized bodies are relatively newly established and that it takes time to conduct lawful investigations and secure judgments, the next few years will be more indicative of their effectiveness.

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	✓
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	X

"Routinely imposed" means that for each **element (A-F)** the national authorities are required to provide at least three examples of specific cases of the first instance convictions delivered in 2022 for the respective offences. The Armenian authorities provided statistics on the total number of convictions (see below) and examples of sanctions routinely imposed for active and passive bribery (elements A and B) as well as offering or promising a bribe, bribe solicitation or acceptance of an offer/promise of a bribe as stand-alone offences (element D). Only one case was provided for bribery with an intangible and non-pecuniary undue advantage (element E), and no cases were provided for active or passive bribery in the private sector and trading in influence.

Table 9.1. Statistics on the total number of convictions in 2022

Number of persons convicted for:	Year
Active bribery in the public sector	51
Passive bribery in the public sector	5
Active bribery in the private sector	0
Passive bribery in the private sector	0
Offering or promising a bribe as a stand-alone offence	17
Bribe solicitation or acceptance of an offer/promise of a bribe as a stand-alone offence	0
Bribery with an intangible and non-pecuniary undue advantage	2
Trading in influence	0

Source: Provided by the Armenian authorities.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	X

Illicit enrichment is punishable under Article 443 of the 2022 Criminal Code of Armenia (Article 310.1 of the 2003 Criminal Code). There were no convictions under these articles in 2022.

In 2020, the Law on Confiscation of Property of Illicit Origin was adopted. It introduced civil confiscation of unjustified assets of public officials. The Law is enforced by a dedicated department of the Prosecutor General's Office. At the time of onsite visit, after an investigation into property of illicit origin, 11 claims were submitted to the court of first instance of general jurisdiction of the city of Yerevan and 10 more claims – to the Anti-Corruption Court. All claims were accepted for proceedings and were being examined in the Anti-Corruption Court. The amount subject to confiscation under the 21 claims was about 52 billion AMD; 296 properties were subject to possible confiscation (with a total value of about 34 billion AMD). No court decisions on civil confiscation were delivered in 2022.

As there were no sanctions for illicit enrichment imposed or unjustified assets confiscated in 2022, Armenia is not compliant with the benchmark.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

The authorities provided one example of a case in which the investigation was started in November 2022 based on Article 436, part 1 of the Criminal Code (giving of a bribe) and is still pending. The case concerned an attempted bribery committed in November 2020 by a truck driver who offered a small amount bribe to the Russian Federation Ministry of Interior's official to avoid administrative liability. In January 2023, the criminal proceeding was sent to the court with an indictment. While the case concerns the bribery of a foreign public official, it does not qualify as a foreign bribery offence under Article 16 of the UN Convention Against Corruption because the described criminal act was not conducted "in order to obtain or retain business or other undue advantages in relation to the conduct of international business." Armenia is not compliant with the benchmark.

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	X
B. Money laundering sanctioned independently of the predicate offence	X

The authorities provided one example of a money laundering case with possible public sector corruption as a predicate offence. As a minimum of three cases are required for compliance, Armenia is not compliant with **element A**. Moreover, the case example which was provided seems to be not eligible because the court acquitted the accused, and the sanction was not imposed. The authorities noted that an unprecedented number of money laundering cases were under investigation in 2023. Almost all corruption cases investigated against high-ranking officials had a money laundering element, which, according to the authorities, could result in a high number of respective convictions.

There were no convictions for money laundering sanctioned independently of the predicate offence in 2022 (**element B**). The authorities provided the position of the Court of Cassation (the highest court in Armenia), stating that money laundering may be punished independently of the predicate offence.[45] During the on-site visit, judges of the Anti-Corruption Court and prosecutors confirmed that the conviction for the predicate offence is not required and the conviction for standalone money laundering is possible in Armenia.

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	X

The authorities referred to the Criminal Code that includes as a separate punishment the deprivation of the right to hold public office. If applied, such punishment results in the dismissal of public officials. However, it may be applied only if provided as an available sanction under a specific criminal offence. Deprivation of the right to hold certain positions or exercise certain activities is not provided under all corruption offences and, when provided, in some cases, is an optional and alternative punishment that is discretional for the court to impose.

The authorities noted that, in practice, the Prosecutor General's Office takes measures to suspend from office all persons accused of corruption crimes and requests the court to impose the punishment of deprivation of the right to hold certain positions or engage in certain activities. If the court does not impose such a punishment, the prosecutor submits a petition to the body authorized to dismiss the person from

[45] "The absence of a previous crime excludes the existence of the crime of legalization of proceeds obtained through criminal means, therefore, when passing a guilty verdict in similar cases, the court must first consider the case of the previous crime as confirmed, as well as money laundering the fact that the subject property was acquired as a result of a previous crime. The Court of Cassation also considers it necessary to emphasize that in this case, it is not necessary to have a legally binding judgment regarding the preceding crime, and it is also not necessary that the person accused of legalizing the income obtained through criminal means has anything to do with the preceding crime." Source: Decisions of the RA Court of Cassation on money laundering: No. EKD/0161/01/15 of November 7, 2019, No. EED/0054/01/15 of April 14, 2021, No. EED/0054/01/15 of April 14, 2011, February 24, 2011 according to the legal positions expressed in decision No. EKD/0090/01/09.

office, requesting to terminate the public office of the convicted person. While this is a positive practice, it cannot change the compliance rating because such a punishment was not available for all types of corruption offences, and the request to dismiss a convicted person was not mandatory (see also the next paragraph).

There are other laws that require dismissal from public office in case of conviction. For example, the Civil Service Law (Article 37) stipulates that the civil servant should be dismissed if a guilty verdict against him enters into force. However, this requirement does not extend to convictions sanctioned with a fine, which is possible under some corruption offences. Therefore, there is no automatic dismissal in case of conviction for a corruption offence in all cases. According to Article 14 of the Public Service Law, persons convicted of a crime shall not have the right to hold a public service position. This provision contradicts Article 37 of the Civil Service Law, which regulates one type of public service and, therefore, can be considered as a special law that will have priority over the general law. Other laws on certain types of public service (for example, on judges and prosecutors) provide for the termination of office in case of conviction.

For the above reasons, Armenia is not compliant with the benchmark.

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

Element	Compliance
A. Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	✓
B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	✓
C. The special exemption is not allowed when bribery is initiated by the bribe-giver	✓
D. The special exemption requires active co-operation with the investigation or prosecution	✓
E. The special exemption is not possible for bribery of foreign public officials	✓
F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	✓

The new Criminal Code of the Republic of Armenia adopted in 2021 no longer includes special exemptions from active bribery or trading in influence offences. The general release from liability in case of active repentance is still allowed for corruption offences, but it is outside of the benchmark. Armenia is compliant with all elements of the benchmark.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	X
B. The expiration of time limits for investigation or prosecution	✓

The authorities provided three case examples when the proceedings in corruption cases were discontinued due to the expiration of the statute of limitations, which means that **element A** was not compliant. According

to the authorities, no corruption cases were terminated in 2022 because of the expiration of the time limit for investigation or prosecution making Armenia compliant under **element B**.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	✓
D. Types of punishments applied	✓
E. Confiscation measures applied	X
F. Types and levels of officials sanctioned	✓

Statistics on corruption cases are published in the annual reports on the official website of the General Prosecutor's Office of RA (LINK). This includes information on the number of cases opened, sent to the court, convicted persons, types of punishments, and types and levels of officials sanctioned. The analysis of the report for 2022 shows that the information required by the benchmark was published, except for information on confiscation measures applied (**element E**).

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	✓

As noted in benchmark 9.1.8, statistics in corruption cases are collected by the General Prosecutor's Office of RA on the central level and published in the annual reports on the official website. Armenia is compliant with the benchmark.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Background

The new RA Criminal Code, adopted in 2021 and enacted in July 2022, introduced a criminal liability of legal persons for criminal offences, including corruption. However, according to the final provisions of the new Code, the corporate liability provisions enter into force on 1 January 2023. No other provisions on the liability of legal persons for corruption existed in 2022. Armenia is, therefore, not compliant with the benchmarks of this indicator.

Assessment of compliance

The Criminal Code enacted in 2022 introduced a quasi-criminal liability of legal persons for corruption, providing that the following “criminal-legal enforcement measures” could be imposed on a legal entity: a fine; a temporary suspension of the right to exercise certain type of activity; a compulsory liquidation; a

ban to conduct activity within the territory of the Republic of Armenia. The amount of the fine must be proportionate to the gravity of the crime but cannot exceed 20 percent of the legal entity's gross income during the year preceding the completion of the crime. Non-governmental stakeholders were concerned that this may be an insufficient punishment, making sanctions not dissuasive. A due diligence defence was not provided, but the Code required taking into consideration several factors at sentencing, including causes and conditions that have contributed to the crime, the measures undertaken by the legal entity aimed at the neutralization of the consequences of the crime, legal interests of bona fide participants or shareholders of a legal entity who were not and could not be aware of the criminal offence, and circumstances characterising the legal entity.

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	X

The new corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

The new corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.5.

	Compliance
The legislation or official guidelines allow due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions considering the case circumstances	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Indicator 9.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Authorities provided evidence of routine application of confiscation of corruption proceeds (all examples concerned money used as bribes) but not of instrumentalities. There was no evidence of enforcement in 2022 of more sophisticated confiscation measures, like confiscation of indirect proceeds, mixed proceeds, or non-conviction based confiscation. The monitoring team welcomed the implementation of a new instrument of civil confiscation of unjustified assets. The high number of lawsuits filed in court was a promising sign that the new instrument could be effectively enforced and result in the confiscation of significant amounts of unexplained wealth of public officials.

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	X
B. Proceeds of corruption offences	✓

The authorities provided three examples of cases where money used as a bribe was confiscated by the first instance court decisions delivered in 2022 in corruption cases. The bribe is considered proceeds, not an instrumentality of offence. Therefore, Armenia is not compliant with **element A** and compliant with **element B**. One case concerned bribing in connection with elections, and two other cases involved bribes to police patrol officers.

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	X

Authorities informed that in 12 convictions issued by the court of first instance in 2022, in addition to the punishment imposed, the amount that was the subject of a bribe was also confiscated according to Article 121 of the Criminal Code of the Republic of Armenia. The authorities did not provide information on how many confiscation orders in these corruption cases were fully executed. Armenia is not compliant with the benchmark.

Benchmark 9.3.3.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Confiscation of derivative (indirect) proceeds of corruption	X
B. Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	X
C. Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	X
D. Confiscation of mixed proceeds of corruption offences and profits therefrom	X

The authorities did not provide information on at least one case where any type of confiscation measures listed in the benchmark were applied. Therefore, all elements are not compliant.

Benchmark 9.3.4.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences	X
B. Extended confiscation in criminal cases	X

In 2021, 21 lawsuits seeking confiscation of property of illicit origin were filed in court by the specialised prosecutor's office department under the new law enacted. However, no judgments were delivered in 2022. The monitoring team welcomes the implementation of a new instrument of civil confiscation of unjustified assets. The high number of lawsuits filed in court is a promising sign that the new instrument will be effectively enforced and result in the confiscation of significant amounts of unexplained wealth of public officials. As the non-conviction based confiscation was not applied at least once in 2022, Armenia is not compliant with **element A**.

"Extended confiscation" in **element B** means criminal confiscation of the assets of the convicted person and informed third parties beyond the proceeds and instrumentalities of the corruption offence, provided that the value of such assets does not correspond to their lawful income. The legislation of Armenia does not include such an instrument, which means non-compliance with this element.

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	X

There were no cases of return of corruption proceeds from abroad in 2022. According to the authorities, the Department for Confiscation of Property of Illicit Origin of the RA Prosecutor General's Office sent 49 official requests abroad to obtain information about property, including 13 requests sent through the CARIN network (Camden Asset Recovery Inter-Agency Network). However, these requests concerned information about the property and were not requests to confiscate corruption proceeds. Armenia is not compliant with both elements of the benchmark.

Indicator 9.4. High-level corruption is actively detected and prosecuted

Background

"High-level corruption" in this monitoring means corruption offences that meet one of the following criteria: A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories). B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to). A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly statutory minimum wages (or the equivalent of the minimum wage if it is not applicable) fixed in the

respective country on 1 January of the year for which data is provided. The methodology also provides a definition of “high-level officials.”

Assessment of compliance

Enforcement of corruption offences against high-level officials remained very low in Armenia in 2022. There was only one case of conviction of a judge, and even in this case, a conditional release was applied to the perpetrator. A number of officials had immunity from criminal investigation and prosecution, but in 2022, it did not impede the criminal proceedings against such persons.

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

According to the authorities, in 2022, there was one case of conviction for high-level corruption in the form of aggravated bribery offences punishable with imprisonment. The case was against a prosecutor. However, in this case, a conditional release was applied. Armenia is no compliant with the benchmark.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	✓
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	✓
D. Does not impede the investigation and prosecution of corruption offences in any other way	✓

Immunity in Armenia is provided for the following officials and persons: deputies (members) of the National Assembly; President of the Republic; judges of the Constitutional Court and judges of the general jurisdiction courts; Human Rights Defender; members of the Central Election Commission; a candidate for the National Assembly Deputy and an elected Deputy before assuming his powers as a Deputy. According to the authorities, in 2022, there was one case of requesting and lifting immunity that concerned a judge. The request was submitted to the Supreme Judicial Council of the RA in a case investigated by the State Security Service under the offences of abuse of office and unjust court decisions.

The assessment of the information provided concerning this case illustrates that the immunity was lifted on the same day when the request was filed without an undue delay, as foreseen by **element A**. However, the legislation did not provide any criteria for lifting immunity contrary to **element B**. The procedure of lifting the immunity of judges is regulated in detail in the Judicial Code and regulations of the Supreme Judicial Council. The immunity did not impede the investigation and prosecution of the corruption offence in any other way. Armenia is compliant with **elements C-D**.

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	✓

The monitoring team did not uncover any public allegations of high-level corruption that were left not reviewed or not investigated, or where a decision not to open an investigation or discontinue it was taken and not explained to the public. Armenia is compliant with the benchmark (100%).

Assessment of non-governmental stakeholders

The non-governmental stakeholders shared the opinion that cases of high-level corruption concerned only former government officials, and there were a few cases of investigation or prosecution against high-level officials in office. The stakeholders also recommended that the Prosecutor General's annual report on corruption include a section on the corruption offences committed by high-level officials.

Regarding the liability of legal persons, the non-governmental stakeholders recommended the following:

1. Change the Criminal Code to include a provision that the legal person can also be charged in case the crime was committed by persons who have de facto control over the legal person.
2. Revise the principles of applying the penalty prescribed in the Criminal Code by removing the ban for charging more than 20% of the annual gross revenue and assigning the penalty as a multiplier of the illegally acquired revenue.

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The fifth round of monitoring under the Istanbul Anti-Corruption Action Plan assesses Armenia's anti-corruption practices and reforms against a set of indicators, benchmarks and elements under nine performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. The report analyses Armenia's efforts to build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement. A follow-up report evaluating Armenia's progress in these areas will follow.

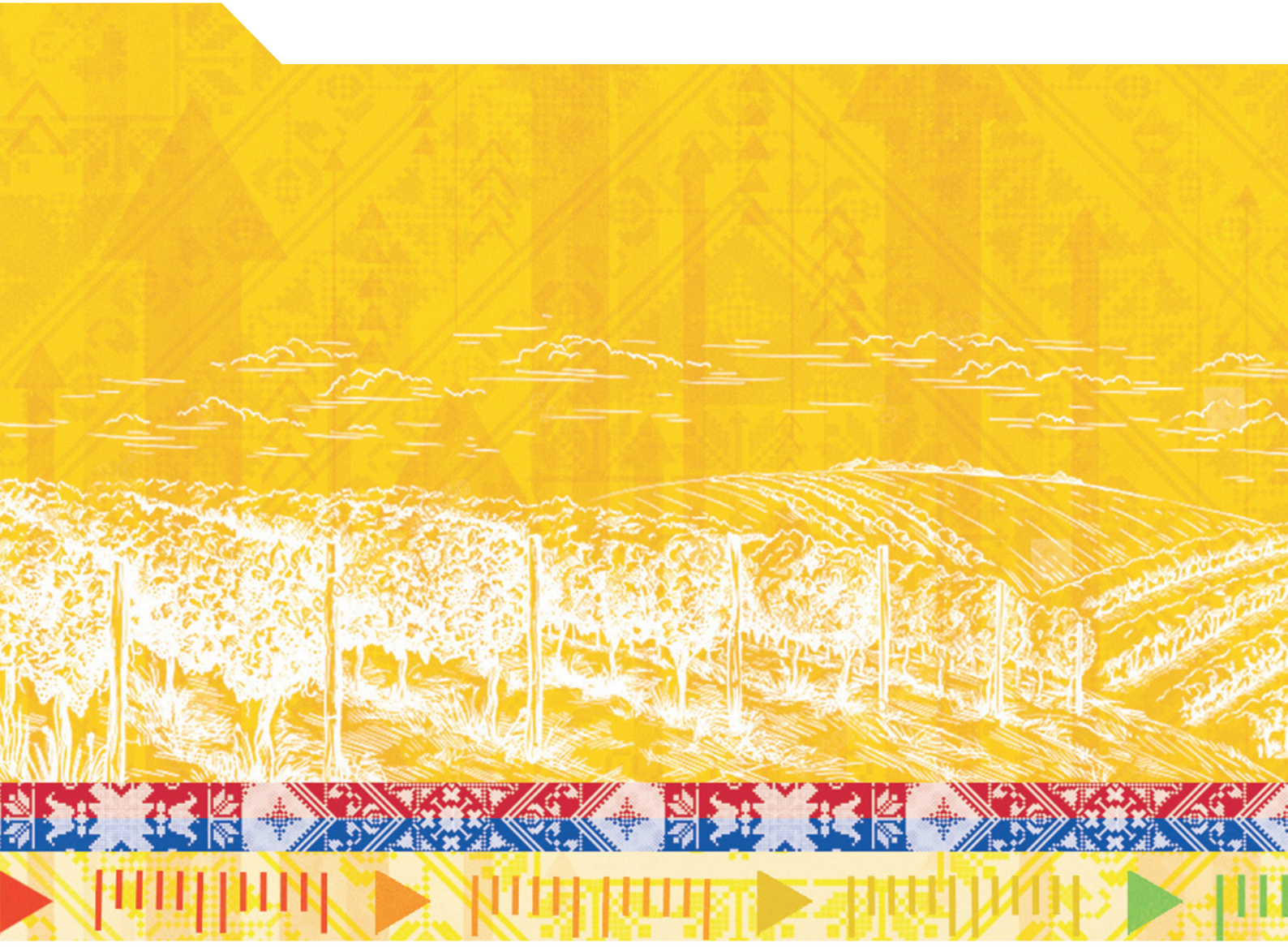
Funded by
the European Union

PDF ISBN 978-92-64-97617-7

9 789264 976177

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Moldova

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN



OECD

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Moldova

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the OECD and do not necessarily reflect the views of the European Union.

Please cite this publication as:
OECD (2024), *Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Moldova: The Istanbul Anti-Corruption Action Plan*, OECD Publishing, Paris, https://doi.org/10.1787/25fc47ac-en.

ISBN 978-92-64-84074-4 (PDF)

Photo credits: Cover design © Angelique Portrait Photography LTD.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

Foreword

The present monitoring report was prepared within the framework of the 5th Round of Monitoring of the Istanbul Anti-Corruption Action Plan (IAP) - a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The IAP brings together ten countries from the region: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine and Uzbekistan. Other countries of the region, OECD countries, international organisations, and non-governmental partners participate in the implementation of the IAP as experts and donors.

The ACN introduced an indicator-based peer review for the IAP 5th Round of Monitoring (2023-2026). After the pilot that tested the new methodology was completed, the revised IAP 5th Round of Monitoring Assessment Framework and Monitoring Guide were agreed upon by the ACN Steering Group in November 2022. The framework benefited from a thorough and inclusive consultative process, marking strong ownership and commitment of the participating countries. The 5th Round of Monitoring was launched in January 2023 in Armenia, Azerbaijan, and Moldova with the support of the EU for Integrity Programme. Due to Russia's large-scale war of aggression against Ukraine, its review was conducted with a reduced substantive scope, covering selected areas under the Assessment Framework.

The report assesses Moldova's performance against a set of uniform indicators, benchmarks, and elements under nine Performance Areas (PA) focusing on anti-corruption policy, prevention of corruption, and enforcement.

The monitoring team for Moldova included Mr. Andrei Furdui (Romania), Ms. Stana Maric (EBRD), Mr Evgeny Smirnov (EBRD), Mr. Davor Dubravica (Croatia), Mr. Cosmin Iordache (Romania) and Mr. Oleksandr Abakumov (Ukraine). Ms. Tanya Khavanska (OECD ACN) was the team leader for the monitoring. The ACN Secretariat team also included Mr. Erekle Urushadze (anti-corruption analyst), Ms Arianna Ingle (editorial support) and Ms. Tamara Shchelkunova (administrative assistant).

The coordination team from Moldova included Mr. Iulian Rusu, Director of the National Anti-Corruption Centre, Mr. Valeriu Cupcea, Head of the International Cooperation Directorate at the National Anti-Corruption Centre, and Ms. Stela Rusu, Deputy Head of the International Cooperation Directorate at the National Anti-Corruption Centre.

The assessment of Moldova was launched in December 2022. Moldova provided replies to the questionnaire with supporting materials in March 2023. The on-site visit to Chisinau took place on 25-28 April 2023 and included 13 sessions with governmental and non-governmental representatives, representatives of international organisations, and the business community. The draft report was sent to Moldova in July 2023 and the authorities provided comments on the draft report in August. Following several rounds of written comments, a bilateral consultation took place on 2 October and the monitoring report of Moldova was discussed and adopted at the ACN Plenary meeting on 3-5 October 2023. Throughout the process, the monitoring team received valuable contributions from Moldovan civil society organisations, including Institute for Development and Social Initiatives (IDIS) Viitorul, the Legal Resources Centre from Moldova, and the Centre for the Analysis and Prevention of Corruption.

Table of contents

FIGURES

TABLES

Acronyms

ACN	Anti-Corruption Network for Eastern Europe and Central Asia
AML/CFT	Anti-Money Laundering/Combatting the Financing of Terrorism
APO	Anti-Corruption Prosecution Office
ATU	Autonomous Territorial Unit
CAPC	Centre for Analysis and Prevention of Corruption
CARA	Criminal Asset Recovery Agency
CEO	Chief Executive Officer
CGC	Corporate Governance Code
COI	Conflict of interest
CSO	Civil Society Organisation
CVIS	Centre of Sociological, Politological and Psychological Analysis and Investigations
EBRD	European Bank for Reconstruction and Development
EU	European Union
CGC	Corporate Governance Code
GRECO	Group of States Against Corruption
GPO	General Prosecutor's Office
IAP	Istanbul Anti-Corruption Action Plan
JSC	Joint Stock Company
LPU	Law regulating procurement by utilities
MDL	Moldovan Lei
MoF	Ministry of Finance
MP	Member of Parliament
NAC	National Anti-Corruption Centre
NCFM	National Commission of the Financial Market
NIA	National Integrity Agency
NIAS	National Integrity and Anticorruption Strategy
NIJ	National Institute of Justice
NGO	Non-governmental organization
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
OSCE	Organisation for Security and Cooperation in Europe
PA	Performance Area
PG	Prosecutor General
PPA	Public Property Agency
PPL	Public Procurement Law
SE	State enterprise
SOE	State-owned enterprise
SCM	Supreme Council of Magistracy
SCP	Superior Council of Prosecutors
TI	Transparency International
UNCAC	United Nations Convention against Corruption
WEF	World Economic Forum
WB	World Bank
WTO GPA	Agreement on Government Procurement of the World Trade Organization

Methodology

The IAP 5th round of monitoring uses an indicator-based methodology to ensure higher objectivity, consistency, and transparency of peer reviews. The normative framework for assessment derives from international standards and good practices based on a stocktake of the previous rounds of IAP monitoring highlighting achievements and challenges in the region.[1] Indicators evaluate anti-corruption policy, prevention of corruption, and criminal liability for corruption, with a focus on practical application and enforcement, particularly at high-level. [2]

The IAP 5th round of monitoring assessment framework includes nine Performance Areas (PAs),[3] with four indicators each and a set of benchmarks under each indicator. Benchmarks are further split into elements to ensure granularity of the assessments and recognition of progress.

The maximum possible score for a Performance Area is 100 points. Indicators under each Performance Area have an equal weight (25 points each). Benchmarks also have an equal weight within an indicator. The exact maximum weight of a benchmark depends on the overall number of benchmarks included in the indicator (i.e., the total weight of the indicator divided by the total number of benchmarks within that indicator).

Each benchmark and its elements (numbered as ''A'', ''B'', ''C'', ''D'' …) are scored individually by three different scoring methods.[4] The performance level for each Performance Area is determined by aggregating scores of all benchmarks within the respective Performance Area according to the below scale (Table 1). Scores of performance areas are not aggregated.

Table 1. Performance level

PERFORMANCE LEVEL	A OUTSTANDING	B HIGH	C AVERAGE	D LOW
SCORE	76-100	51-75	26-50	<25

[1] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia

[2] The IAP 5th Round of Monitoring Assessment Framework and Guide.

[3] Performance Area 1: Anti-Corruption Policy; Performance Area 2: Conflict of Interests and Asset Declarations; Performance Area 3: Protection of Whistleblowers; Performance Area 4: Business Integrity; Performance Area 5: Integrity in Public Procurement; Performance Area 6: Independence of Judiciary; Performance Area 7: Independence of Prosecution Service; Performance Area 8: Specialised Anti-Corruption Institutions; Performance Area 9: Enforcement of Corruption Offences.

[4] For more information, see IAP 5th Round of Monitoring Assessment Framework.

Executive summary

Moldova's current **anti-corruption policy documents** (PA 1) were developed based on a wide array of evidence, including analysis of the implementation of earlier documents, research by local CSOs and international organisations, public opinion surveys and (to a more limited extent) risk assessments. The documents include objectives and outcome and impact indicators but lack an estimated budget. The policy documents were adopted through a transparent and inclusive process involving consultations with and review of feedback from relevant public bodies and nongovernmental stakeholders (including publication of explanations regarding the proposals that were not accepted).

Only approximately half of the planned measures were fully implemented in 2022, but lack of funding has not been a major factor affecting the implementation rate (as just one measure could not be implemented for funding-related reasons). The Anti-Corruption Policy Service of the National Anti-Corruption Centre is the body responsible for the coordination and monitoring of policy implementation. The Service has only two staff members but appears to have generally coped well with its duties, providing the implementing agencies with consultation and guidance. The process of monitoring and evaluation of policy implementation has mostly been conducted in line with the relevant standards, although monitoring reports lack assessment based on impact indicators and information on funds spent on the implementation of individual measures.

Moldova's legislation contains definitions of private interest and **conflict of interest** (including actual and potential but not apparent COI) and establishes responsibilities for the reporting and resolution of COI (PA 2). The range of COI resolution methods available under the law is limited and does not include such options as divestment of asset-related interest, recusal, and resignation of the official in question. There are specific COI resolution methods for the officials with no direct supervisors but not for the members of collegiate state bodies. There are no specific regulations or rules tailored to the risks of specific public offices. Sanctions for various COI-related violations are in place, and they are applied in practice, although not to high-level officials. There is no practice of application of other COI enforcement measures, such as invalidation of decisions or contracts.

Moldova has a comprehensive system of **asset declarations** covering all relevant categories of public officials (and their family members) and most of the types of assets and interests required under the benchmarks. The declarations are filed through a centralised electronic system and are accessible to the general public. But information is not published in a machine-readable format and some information is withheld.

Verification of asset declarations is performed by the National Integrity Authority's integrity inspectors and includes examination of truthfulness and completeness of disclosure, as well as review for signs of conflict of interest and illicit enrichment. The powers of integrity inspectors are mostly adequate for the performance of these tasks. A large number of verifications are triggered by external complaints or notifications. On the negative side, there is no systematic practice of risk-based verifications. While the wide scope of verifications is commendable, the detection rate of violations (and consequently of sanctioning) is low.

Moldova's legislation guarantees **protection** to individuals who report corruption at their workplace (PA 3). The precondition of reporting in good faith and the public interest test are problematic. Protection extends to all relevant categories of whistleblowers, including those employed in the public and the private sectors, SOEs and defence and security institutions. Some important types of safeguards (such as protection of a whistleblower's identity and protection from retaliation at workplace) are in place, but others are not (such as protection of personal safety and release from liability linked with the disclosure). The law also does not contain provisions on consultation on protection, free legal aid or reinstatement (although it does entitle whistleblowers to compensation).

Whistleblowers can report internally at their workplace or to the designated public institution (the NAC), or they can opt to make a public disclosure under specific conditions. Not all public institutions have set up internal reporting channels in practice. There is no dedicated central electronic platform for reporting (although reports can be filed through the NAC website). Anonymous whistleblower reports are not allowed under the law, and individuals who report anonymously are not entitled to protection.

The responsibility for whistleblower protection is assigned to the People's Advocate (Ombudsman), but the institution has no unit or staff dealing exclusively with whistleblowers. The expansion of the institution's mandate to cover whistleblower protection has not been followed by an increase its human or financial resources or provision of relevant training. The People's Advocate also lacks appropriate powers to effectively review whistleblower appeals and provide protection.

The data on the application of whistleblower protection law in practice is very limited. The People's Advocate only received three applications in 2022 and none of these qualified for protection.

The **Corporate Governance Code** adopted (PA 4) by the National Commission for Financial Markets (NCFM) establishes the responsibility of Moldova's companies' boards for the management of risks (including corruption risks). Compliance with the Code is mandatory for the country's listed companies. There is, however, no institution with a clear mandate to enforce this provision and no effective monitoring of compliance in practice.

Companies applying for registration in Moldova are required to disclose information about their beneficial owners. This information is made available to the general public via a dedicated website free of charge, but the system lacks some key functionalities that would provide an appropriate level of transparency and facilitate the processing of large amounts of data. No effective sanctions are in place for the failure to provide beneficial ownership information or provision of false information, and enforcement appears weak.

The government informed that as of 1 July 2023 with the amendment of the AML/CFT Law (Law no. 66/2023), the beneficial owner's name, surname, country of residence is not anymore publicly available on the website of the Public Services Agency. These changes to the law were done to implement the EU Court of Justice's Decision (C37/20). The impact thereof will be considered during the next monitoring round.

Moldova currently has no dedicated institution for the handling of complaints by companies concerning the violation of their rights, although there was an initiative by the government in 2020 to set up such institution. After comments by the Venice Commission and the OSCE, the initiative was abandoned. As communicated by the People's Advocate, starting from August 2023, legal entities can also appeal to the People's Advocate (Ombudsman) for human rights violations.

Legislation does not require Moldova's SOEs to have independent members on their boards. There are no uniform rules regarding the selection of SOE board members and CEOs. This has affected the transparency of board and CEO appointments in SOEs in practice. However, on the positive side, CEOs in two of the country's five largest SOEs appear to have been selected through a transparent and merit-based procedure in 2022. Comprehensive compliance programs remain an exception in Moldova's largest SOEs, while publication of key information about the operation of these SOEs is patchy at best. As understood from the government, in May and June 2023 amendments have been adopted providing for

the appointment of independent board members at SOEs (see benchmark 4.1). These changes will be assessed during the next monitoring round.

The **public procurement** system (PA 5) in Moldova is the main mechanism for ensuring transparency, competition, and value for money in the acquisition of goods, services, and works by public entities. The public procurement system operates under the legal framework governed by the Law on Public Procurement and associated regulations. These laws aim to harmonize Moldova's procurement practices with international standards and principles, promoting fairness, efficiency, and integrity.

The Ministry of Finance is the primary governmental body in charge of public procurement policies and regulations, as well as the strategy for their development. The dedicated Service for Public Procurement Policies within the Ministry is responsible for development of legislative acts and regulatory framework on public procurement. The Ministry has created and maintains a nationwide e-procurement platform MTender, which provides electronic public procurement records. However, the system does not currently cover all procurement methods available under the law, while centralised publication of up-to-date procurement data remains a challenge and most information is not currently published in a machine-readable format.

The Public Procurement Agency (PPA), a specialised body subordinated to the Ministry is in charge of implementing the public procurement policy, whilst the State Treasury, also subordinated to the Ministry, is in charge of registering public contracts and making corresponding payments. The independent National Agency for the Resolution of Complaints is reviewing and taking decisions on complaints from participants in procurement processes and other parties concerned.

Moldova has implemented various measures to combat corruption in public procurement. However, there are gaps in terms of sanctions for violation of COI rules, both in law and in practice, while the provisions on mandatory debarment from public procurement of natural and legal persons convicted for corruption are not enforced effectively in practice.

Moldova has launched significant **judicial reforms** (PA 6) since the change of government in 2021 with many changes being too recent to evaluate their practical application. To ensure integrity of judiciary, a Pre-Vetting Commission has been set up in 2022 to conduct integrity checks of the candidates for the judicial governance body – the Superior Council of Magistracy. The work of the Commission has not been completed by the end of 2022, resulting in Council and most of its subsidiary bodies having limited functionalities. The amended legal basis which regulates the set up and functioning of the Council and its subsidiary bodies is mostly in line with international standards. However, this remains on paper until the appointment of the new members and relaunch of the Council's and its subsidiary bodies' full scope of work. Judges in Moldova are now appointed for life through an open competition; the Superior Council of Magistracy proposes candidates for appointment to the President who may reject them on clear grounds and providing an explanation. Disciplining of judges is well regulated, however, some grounds for disciplinary liability are still ambiguous, leaving room for discretionary interpretation. Other challenges persist, including that the judiciary is understaffed, the judges are underpaid, creating a high risk for corruption and a growing backlog of cases.

In Moldova, the **Prosecutor General** is selected and proposed for appointment by the Superior Council of Prosecutors (PA 7). Clear grounds for the dismissal were stipulated in the law, however, the main steps of the procedure were not regulated. There was no appointment or dismissal of Prosecutor General in 2022. The Superior Council of Prosecutors was the main body of the prosecutorial self-governance in Moldova. However, it was not composed of majority of prosecutors elected by their peers, and civil society representatives did not constitute more than one third of its composition. This was also the case with three sub-bodies of the Council. Vacancies for prosecutorial positions and promotions have been published online in 2022. Prosecutors were selected through competitions and based on merit. Grounds and procedure for disciplinary liability of prosecutors were stipulated in law, however some were too broad allowing an unlimited discretion of the decision-making body. Investigation into allegations of disciplinary

violations was separated from the decision-making in such cases. Budget and remuneration of prosecutors complied with the benchmarks; however, salaries of prosecutors have not changed since 2018 and cannot provide sufficient insulation from corruption risks.

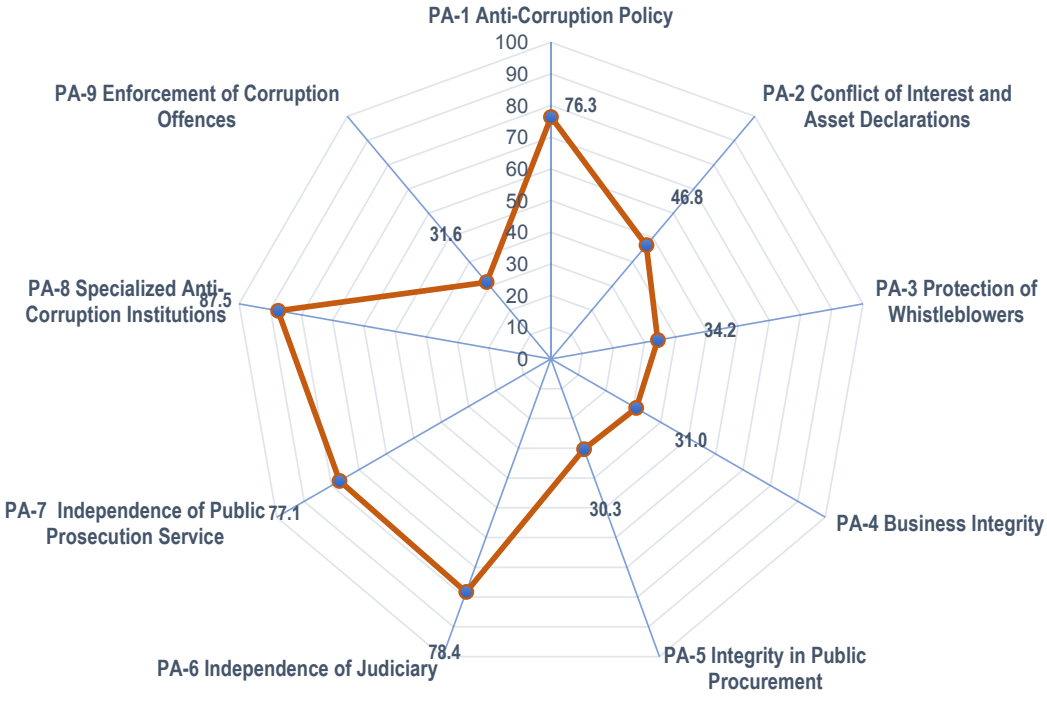
Moldova ensures **specialisation** of anti-corruption investigators and prosecutors (PA 8). Two key institutions – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office investigate corruption, with Anti-Corruption Prosecution Office focusing on high-level corruption; it also presents corruption cases in court. In 2022, the Chief Prosecutor of Anti-Corruption Prosecution Office was selected through a transparent and merit-based procedure. The competencies of the two agencies overlap, but Moldova is addressing this issue through the reform which took place outside of the monitoring timeframe in 2023. Moldova should ensure the focus on high-level corruption through this future reform. Identification, tracing, return and management of assets is performed by specialised officials of the Criminal Asset Recovery Agency, which has been active in 2022.

Corruption offences, especially for trading in influence and active bribery have been enforced in Moldova in 2022 (PA 9). However, enforcement on other offences should be stepped up, including passive bribery and bribery in the private sector. Moldova is yet to commence an investigation into a foreign bribery and had no cases of money laundering with corruption as a predicate offence or cases of illicit enrichment. Special exemption from active bribery and trading in influence leaves loopholes for abuse; statute of limitation for petty forms of corruption is too short and impedes investigations. Not all statistical data on enforcement is disaggregated and published online, and its collection is fragmented among various institutions. Moldova criminalises corruption perpetrated by legal persons. However, monetary sanctions are low and there have been only two cases of legal persons held liable for corruption in 2022. This is not enough to establish consistent enforcement practice. Confiscation is applied in Moldova; however, examples were not provided for more in-depth analysis of confiscation practices. Moldova does not track enforcement of high-level corruption cases. Table 2 shows Moldova's performance levels for all evaluated areas and the total number of points in each performance area.

Table 2. Performance level and scores of Moldova by Performance Area

Performance Area	Performance Level	Score
PA-1 Anti-Corruption Policy	A	76
PA-2 Conflict of Interests and Asset Disclosure	C	47
PA-3 Protection of Whistleblowers	C	34
PA-4 Business Integrity	C	31
PA-5 Integrity in Public Procurement	C	30
PA-6 Independence of Judiciary	A	78
PA-7 Independence of Public Prosecution Service	A	77
PA-8 Specialised Anti-Corruption Institutions	A	88
PA-9 Enforcement of Corruption Offences	C	32

Figure 1. Anti-Corruption Performance of Moldova by Performance Area.



1 Anti-corruption policy

Moldova's current anti-corruption policy documents were developed based on a wide array of evidence, including analysis of the implementation of earlier documents, research by local CSOs and international organisations, public opinion surveys and (to a more limited extent) risk assessments. The documents include objectives and outcome and impact indicators but lack an estimated budget. The policy documents were adopted through a transparent and inclusive process involving consultations with and review of feedback from relevant public bodies and nongovernmental stakeholders (including publication of explanations regarding the proposals that were not accepted). Only approximately half of the planned measures were fully implemented in 2022, but lack of funding has not been a major factor affecting the implementation rate. The Anti-Corruption Policy Service of the National Anti-Corruption Centre is the body responsible for the coordination and monitoring of policy implementation. The Service has only two staff members but appears to have generally coped well with its duties, providing the implementing agencies with consultation and guidance. The process of monitoring and evaluation of policy implementation has mostly been conducted in line with the relevant standards, although monitoring reports lack assessment based on impact indicators and information on funds spent on the implementation of individual measures.

Figure 1.1. Performance level for Anti-Corruption Policy is outstanding.

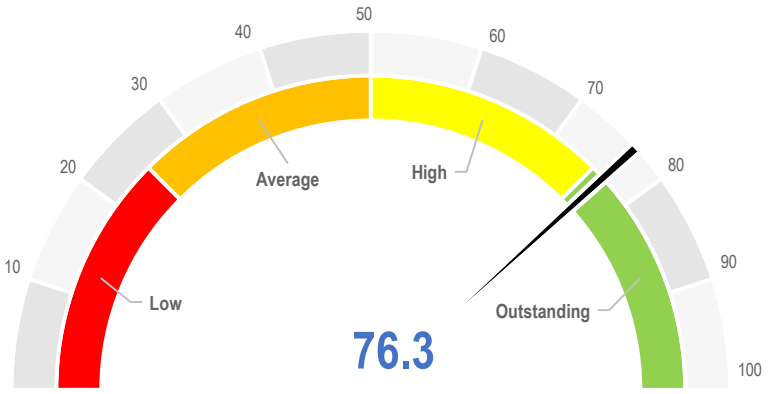
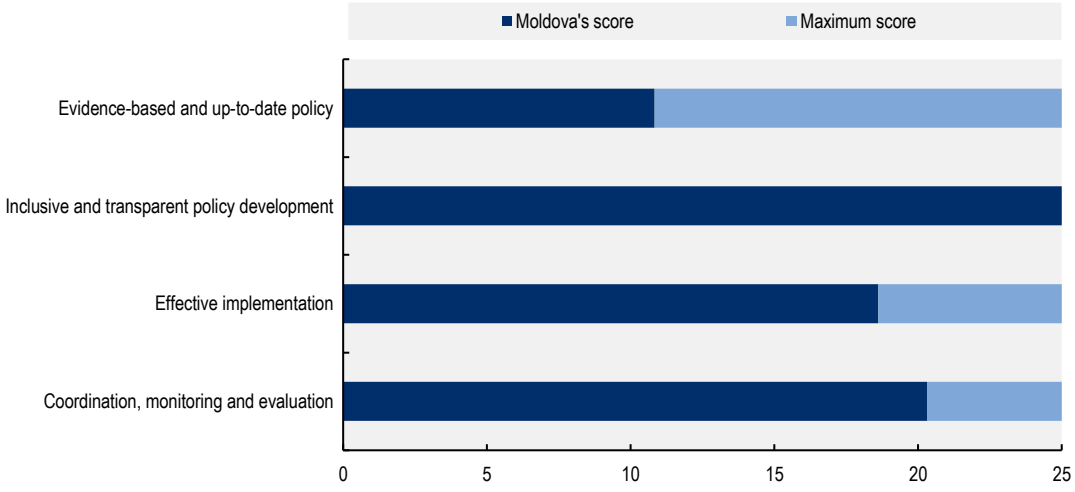


Figure 1.2. Performance level for Anti-Corruption Policy by indicators.



Indicator 1.1. The anti-corruption policy is evidence-based and up-to-date

Background

Moldova's current National Integrity and Anticorruption Strategy (NIAS) was adopted by the Parliament in 2017 and originally covered the period between 2017 and 2020. However, in December 2021, the Parliament formally extended the NIAS through 2023. Previous two strategies covered the years 2005-2010 and 2011-2016 respectively. Throughout this report, the extended 2017-2023 NIAS will be used as a reference point for the assessment of the benchmarks related to the country's anti-corruption policy document.

Assessment of compliance

Benchmark 1.1.1.

The following evidence has been used for developing objectives and measures of the policy documents, as reflected in the policy documents or their supporting materials:

Element	Compliance
A. Analysis of the implementation of the previous policy documents (if they existed) or analysis of the corruption situation in the country	✓
B. National or sectoral corruption risk assessments	X
C. Reports by state institutions, such as an anti-corruption agency, supreme audit institution, and law enforcement bodies	X
D. Research, analysis, or assessments by non-governmental stakeholders, including international organisations	✓
E. General population, business, employee, expert, or other surveys	✓
F. Administrative or judicial statistics	X

A – compliant. An analysis of the implementation of the 2011-2016 Strategy (which covered the period from 2011 through 2015) was used in the process of development of the current NIAS. Section 1 of the NIAS contains extensive references to the findings of the assessment of the implementation of the previous Strategy.

B – non-compliant. No national corruption risk assessment has been conducted. Last sectoral risk assessments conducted covered the spheres of healthcare (2014) and public procurement (2016). Their results were reflected in the relevant sectoral anti-corruption action plans for 2017-2020 but not in the NIAS.

C – non-compliant. At least two reports (prepared by the National Anti-Corruption Centre (NAC)) made available to the monitoring team meet the criteria of this element: "Strategic analysis regarding the phenomenon of corruption in the local public administration in the Republic of Moldova"(2015) and "Study on the consolidation of authorities to prevent and combat economic crimes in the Republic of Moldova" (2016). However, Moldova was unable to demonstrate a clear link between these reports and the current policy documents or their support documents.

D – compliant. The NIAS contains references to a number of assessments of the situation in the country in terms of corruption, including studies by local or international civil society organisations and think tanks

(Transparency International Moldova's National Integrity System Assessment (2013-2014); a study by the Centre for Analysis and Prevention of Corruption (CAPC) CAPC on the degree of transposition into national legislation of the Council of Europe Civil Convention on Corruption; studies by independent analytical centre Expert-Grup on the reports of the Court of Accounts and on the implementation of its decisions; a Basel Institute study on the asset recovery mechanisms in Moldova; a UNDP-commissioned report on the compliance of Moldova's anti-corruption system with the relevant international standards;), reports by international organisations (GRECO's Second compliance report for the Third round of evaluation of Moldova) and international rankings and indices (the World Bank's Ease of Doing Business study (2015); the Heritage Foundation's Index of Economic Freedom (2016); TRACE International's Global Business Bribery Risk Index;).

E – compliant. The NIAS specifically refers to two public opinion surveys: Transparency International's Global Corruption Barometer (the 2009 and 2015 editions) and a 2017 survey by the International Republican Institute in Moldova which included multiple questions on corruption. Furthermore, according to Moldova, additional surveys were used during the drafting of the NIAS, although these are not cited in the document.

F – non-compliant. The monitoring team did not receive clear evidence that administrative or judicial statistics were used for the development of the policy documents and their use was not reflected in the NIAS or its supporting materials.

Benchmark 1.1.2.

	Compliance
The action plan is adopted or amended at least every three years	X

Non-compliant. Moldova adopted an amended implementation action plan when it extended the 2017-2020 NIAS until 2023 in December 2021, so there was no update within three years of the adoption of the original action plan and there was a one-year gap when no action plan was in place.

Benchmark 1.1.3.

Policy documents include:

Element	Compliance
A. Objectives, measures with implementation deadlines, and responsible agencies	✓
B. Outcome indicators	✓
C. Impact indicators	✓
D. Estimated budget	X
E. Source of funding	✓

A – compliant. The NIAS has six general objectives: discouraging involvement in acts of corruption; recovery of the proceeds of corruption offences; ethics and integrity in the public, private and non-governmental sectors; protection of whistleblowers and victims of corruption; transparency of institutions, the financing of political parties and the media; educating society and officials. The NIAS lists the actions to be implemented in order to achieve each of these. Furthermore, there are several objectives (priorities) under each of the strategy's seven "pillars" (the Parliament, the Government, public sector and local public

administration, justice and anti-corruption agencies, the Central Electoral Commission and political parties, the Court of Accounts, the People's Advocate, the private sector). The NIAS implementation action plan is structured around these seven pillars and establishes relevant measures, implementation deadlines and responsible agencies for each objective.

B – compliant. The NIAS includes outcome indicators for each objective (priority) under each of the seven "pillars." For example, for the objective of "promoting ethics among the members of Parliament," the outcome indicators are the number of relevant inquiries and the number of sanctions imposed. For the objective of "effectiveness of justice and anti-corruption bodies," the outcome indicator is improved statistics of convictions for corruption acts; and so on.

C – compliant. The NIAS includes several impact indicators for each of the seven pillars. The impact indicators established for the pillars mainly focus on aspects related to the level of trust, the perceptions of corruption within the institutions, the quality of the regulations, the experiences of people in contact with the public authorities, the level of implementation of the authorities' recommendations (the Court of Accounts, the Ombudsman), freedom of business from corruption, reduction of money laundering risks (private sector), transparency of activity, etc.

D – non-compliant. According to Moldova, the total cost of implementation of the NIAS in 2017-2020 was 909,629,670 Moldovan Lei (MDL) [EUR 45,722,535], with the assistance of international development partners accounting for approximately 3.2 percent of this sum. However, an estimated budget did not appear in the original action plan. Also, no budget figures are available for the updated action plan which covers the period through 2023.

E – compliant. The NIAS implementation action plan identifies a source of funding for each measure.

Indicator 1.2. The anti-corruption policy development is inclusive and transparent

Assessment of compliance

Benchmark 1.2.1.

The following is published online:

Element	Compliance
A. Drafts of policy documents	✓
B. Adopted policy documents	✓

A – compliant. The drafts of both the NIAS and the updated Action Plan adopted in 2021 are available on the NAC website.

B – compliant. The adopted final versions of the NIAS and the updated Action Plan are available on the websites of the NAC and the Parliament.

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

Element	Compliance
A. With sufficient time for feedback (no less than two weeks after publication)	✓
B. Before adoption, the government provides an explanation regarding the comments that have not been included	✓
C. An explanation of the comments that have not been included is published online	✓

A – compliant. The drafting of the current strategy began in November 2016 and ended in February 2017, with multiple consultation events held in between. Two and a half months were allotted for feedback. Following the initial launch event, separate discussions took place on individual “pillars” of the strategy. According to the government, over 1,000 comments on the original draft were ultimately submitted. The extension of the NIAS and the adoption of an updated Action Plan in December 2021 were preceded by a dual consultation process between November 2020 and February 2021 during which first the relevant public authorities and then CSOs were invited to submit their proposals and comments (the period allocated for the latter procedure was between 31 December 2020 and 19 January 2021). Public entities submitted 35 "opinions" and the CSOs – three "opinions" during this process.

B – compliant. During the adoption of the current NIAS in 2017, the NAC prepared two documents detailing the comments received as well as the reasons for accepting or rejecting them. Similarly, during the extension of the NIAS and the update of the Action Plan in 2021, the NAC published two documents detailing the proposals received from public entities and CSOs respectively and providing explanations for the proposals that were not accepted or were only accepted partially.

C – compliant. The documents referred to in element "B" above are available on the NAC website.[5]

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

Benchmark 1.3.1.

	Compliance
Measures planned for the previous year were fully implemented according to the government reports	49%

According to the Monitoring and Evaluation Report of the Implementation of the National Integrity and Anti-Corruption Strategy for the years 2017-2023 (reporting period: 2022), among the reported actions, 52 (49%) were fully implemented, 43 (40.5%) were partially implemented, and 8 (7.5%) of actions were not implemented, while 3 (3%) of actions were qualified as impossible to achieve, mostly due to the non-occurrence of the cause stipulated in the action. The country’s score for this benchmark is therefore 49% of the maximum score.

[5] https://cna.md/pageview.php?l=ro&idc=44&t=/Transparenta-decizionala/Proiecte-elaborate

Benchmark 1.3.2.

	Compliance
Anti-corruption measures unimplemented due to the lack of funds do not exceed 10% of all measures planned for the reporting period	✓

Compliant. According to Moldova, only one measure ("equipping with polygraph machines of the Superior Council of Magistracy, the Customs Service and the Ministry of Internal Affairs") could not be implemented in 2022 because of the lack of funds, which is well below the 10-percent threshold.

Indicator 1.4. Coordination, monitoring, and evaluation of anti-corruption policy is ensured

Background

A unit within the National Anti-corruption Centre (NAC) – the Anti-Corruption Policy Service -- acts as the Secretariat of the Working Group responsible for coordination and monitoring. According to the Strategy, the Secretariat is responsible for organizing meetings of the monitoring groups (three monitoring groups made up of representatives of the relevant public institutions and CSOs oversee the implementation of the NIAS in different areas), collecting information from the implementing agencies, and drafting implementation reports. The relevant implementing institutions are required to provide it with necessary information.

Assessment of compliance

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

Element	Compliance
A. Coordination and monitoring functions are assigned to dedicated staff (secretariat) at the central level by a normative act, and the staff is in place	✓
B. The dedicated staff (secretariat) has powers to request and obtain information, to require participation in the convened coordination meetings, to require submission of the reports of implementation	✓
C. Dedicated staff (secretariat) has the resources necessary to conduct respective functions	✓
D. Dedicated staff (secretariat) routinely provides implementing agencies with methodological guidance or practical advice to support policy implementation	✓

A – compliant. The NIAS identifies the NAC as the Secretariat of the Monitoring Groups responsible for the overseeing the implementation of the Strategy. Within the NAC, based on a formal order by the agency's head, this role is assigned to the Anti-Corruption Policy Service. According to Moldova, based on the above order, the Service's mission is to "ensure the efficient management of anti-corruption policies,

through the coordination, the process of elaboration, monitoring and objective evaluation of their implementation by all public entities at the central and local level." The staff is currently in place and operational, with all (two) positions filled.

B – compliant. The Strategy lists the duties (rather than powers) of the Secretariat, including collecting information and organising the coordination meetings. It also provides that "public entities present to the Secretariat in writing and by e-mail information necessary for the monitoring and evaluation of the implementation of the planned actions for which they are responsible within the time frames established by the action plans." Furthermore, the NAC (which is designated as the Secretariat of Monitoring Groups) has the right to "request and receive from public authorities, and from natural and legal persons, any documents, records, information and data to be able to exercise its duties of preventing and analysing corruption and related acts…" (Article 6 of the Law no.1104/2002 on NAC). The authorities that fail to provide the requested information face a sanction in the form of a fine (Article 349 paragraph (1) of the Contravention Code of the Republic of Moldova no.218/2008).

C – compliant. The dedicated staff (Anti-Corruption Policy Service of the NAC) includes two people. CSOs have suggested that this number of employees is not enough. However, the monitoring team has not seen any definitive evidence that the work of the Secretariat has been affected negatively by insufficient human resources. According to Moldova, some of the Secretariat's work (including the drafting of monitoring reports) is done by external experts funded by NAC's international partners. During the reporting period, the Secretariat fulfilled its responsibilities, collecting information from the 102 implementing public entities and producing the monitoring report for the first six months of the year (the report for the whole year was published in the first quarter of the 2023 which is outside the timeframe of this assessment).

D – compliant. The Secretariat has provided the implementation agencies with methodological guidance and practice advice in the following manner: (1) a series of 15 workshops for the designated focal points from the implementing agencies on monitoring and reporting; (2) a mentoring program for the entities involved in the implementation of sectoral anti-corruption action plans; (3) on-demand support through a total of 523 emails and phone-calls in 2022; (4) a written instruction and a video tutorial for the implementing agencies. While some of these activities (the 15 workshops and the mentoring programme) possibly took place outside the assessment period of this report, the 523 emails and phone calls from 2022 are definitely relevant for this assessment. Moldova has provided the monitoring team with three relevant examples.

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

Element	Compliance
A. A monitoring report is prepared once a year	✓
B. A monitoring report is based on outcome indicators	X
C. A monitoring report includes information on the amount of funding spent to implement policy measures	X
D. A monitoring report is published online	✓

A – compliant. A monitoring report covering the first six months of 2022 was prepared and published in the second half of 2022. Since the NIAS expired in 2020 and the decision to extend it until 2023 was only made at the end of 2021, no implementation took place in 2021 and, consequently, there was no monitoring report covering 2021 in 2022. The full monitoring report for 2022 was published in the first quarter of 2023, which is outside the timeframe of this assessment.

B – non-compliant. The monitoring report is based primarily on progress indicators which measure progress in the implementation of individual measures under each objective (priority). As for the outcome indicators which are established in the NIAS in order to measure progress at the level of the Strategy's objectives (priorities), these appear in special tables included in the monitoring report for each of the seven "pillars." However, the actual assessment in the report is based not on these indicators but mostly on results of public opinion surveys and various international indices and rankings. For example, for Pillar 1 (Parliament), the outcome indicator for objective 1.2 ("strengthening of parliamentary control") is the number of laws and public institutions subjected to parliamentary control. However, instead of the relevant figures, the monitoring report provides Moldova's scores from the World Justice Project's Rule of Law Index and the World Bank's Governance Indicators. This appears to be the case for other pillars/objectives too. While Moldova is therefore not compliant with this element, the inclusion of survey results in the monitoring reports is a positive practice, as it helps track progress based on the Strategy's impact indicators.

C – non-compliant. The monitoring report for the six months of 2022 does not include information on the amount of funding spent on the implementation of policy measures.

D – compliant. The monitoring report for the sixth months of 2022 was published online.[6]

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

Element	Compliance
A. An evaluation report is prepared at least at the end of each policy cycle	✓
B. An evaluation report is based on impact indicators	✓
C. An evaluation report is published online	✓

A – compliant. Moldova prepared its last evaluation report in 2022 and it covers the policy cycle of 2017-2020 (i.e. before the extension of the NIAS until 2023).

B – compliant. The 2017-2020 evaluation report contains assessment based on impact indicators for each of the eight pillars of the NIAS. At the end of each section, there is a table with impact indicators for the relevant pillar and the scores assigned based on change in the impact indicators over the evaluation period. According to Moldova, three surveys were carried out during the implementation period in order to measure the impact of the Strategy.

C – compliant. The evaluation report is available online via the NAC website.[7]

[6] ADD

[7] https://cna.md/public/files/RAPORT_evaluare-SNIA_2017-2020.pdf

Benchmark 1.4.4.

Non-governmental stakeholders are engaged in the monitoring and evaluation:

Element	Compliance
A. Non-governmental stakeholders are invited to regular coordination meetings where the monitoring of the progress of the policy implementation is discussed	✓
B. A monitoring report reflects written contributions of non-governmental stakeholders	N/A
C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders	✓

A – compliant. All three monitoring groups responsible for overseeing the implementation of the NIAS include non-governmental stakeholders who participated in the groups' meetings. According to Moldova, no request from a non-governmental stakeholder to participate in the monitoring has been rejected. This was also confirmed by representatives of several CSOs at their meeting with the monitoring team.

B – not applicable: CSOs did not propose any written contributions to the monitoring report for 2022.

C – compliant. The 2022 NIAS evaluation report reflects at least one assessment by an NGO: The 2021 NIAS Impact Monitoring Survey conducted by the Centre of Sociological, Politological and Psychological Analysis and Investigations CIVIS (Centre CIVIS).

Box 1.1. Good practice – Monitoring and Evaluation Process

A number of elements of the NIAS monitoring and evaluation process in Moldova represent positive practices that other countries could potentially consider for application in their respective contexts.

First, for each of its "pillars", the strategy includes general objectives, more specific "priorities", expected outcomes, outcome indicators and impact indicators. If applied effectively in practice, this framework should make it possible to track both short-term progress and long-term impact of policy measures and adjust them accordingly.

Second, the establishment of monitoring groups responsible for overseeing the implementation of the policy is a welcome decision as they include a wide range of stakeholders and should (at least in theory) facilitate comprehensive and unbiased assessment of the process. The authorities must therefore address the concerns of CSO representatives that their voices are not properly heard in these groups.

Finally, the use of an external assessment report as one of the sources for the evaluation of the policy's implementation is a very encouraging development, especially since this type of approach is not yet particularly common in the region.

Assessment of non-governmental stakeholders

CSO representatives whom the monitoring team met noted that the opinions of CSO members of the NIAS monitoring working groups were often ignored and not included in the final decisions of the groups, unlike the proposals by representatives of public authorities.

2 Conflict of interest and asset declarations

Moldova's legislation contains definitions of private interest and conflict of interest (including actual and potential but not apparent COI) and establishes responsibilities for the reporting and resolution of COI. The range of COI resolution methods available under the law is limited and does not include such options as divestment of asset-related interest, recusal, and resignation of the official in question. There are specific COI resolution methods for the officials with no direct supervisors but not for the members of collegiate state bodies. There are no specific regulations or rules tailored to the risks of specific public offices. Sanctions for various COI-related violations are in place, and they are applied in practice, although not to high-level officials. There is no practice of application of other COI enforcement measures, such as invalidation of decisions or contracts.

Moldova has a comprehensive system of asset declarations covering all relevant categories of public officials (and their family members) and most of the types of assets and interests required under the benchmarks. The declarations are filed through a centralised electronic system and are accessible to the general public. But information is not published in a machine-readable format and some information is withheld.

Verification of asset declarations is performed by the National Integrity Authority's integrity inspectors and includes examination of truthfulness and

completeness of disclosure, as well as review for signs of conflict of interest and illicit enrichment. The powers of integrity inspectors are mostly adequate for the performance of these tasks. A large number of verifications are triggered by external complaints or notifications. On the negative side, there is no systematic practice of risk-based verifications. While the wide scope of verifications is commendable, the detection rate of violations (and consequently of sanctioning) is low.

Figure 2.1. Performance level for Conflict of Interest and Asset Declaration is average.

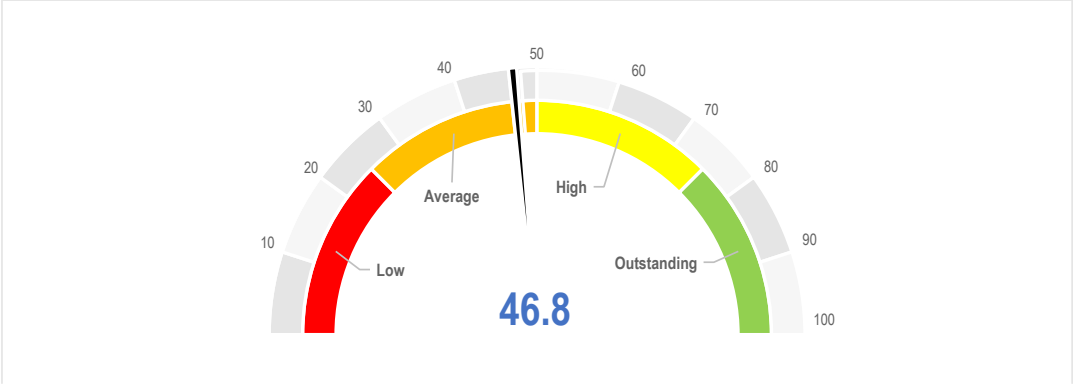
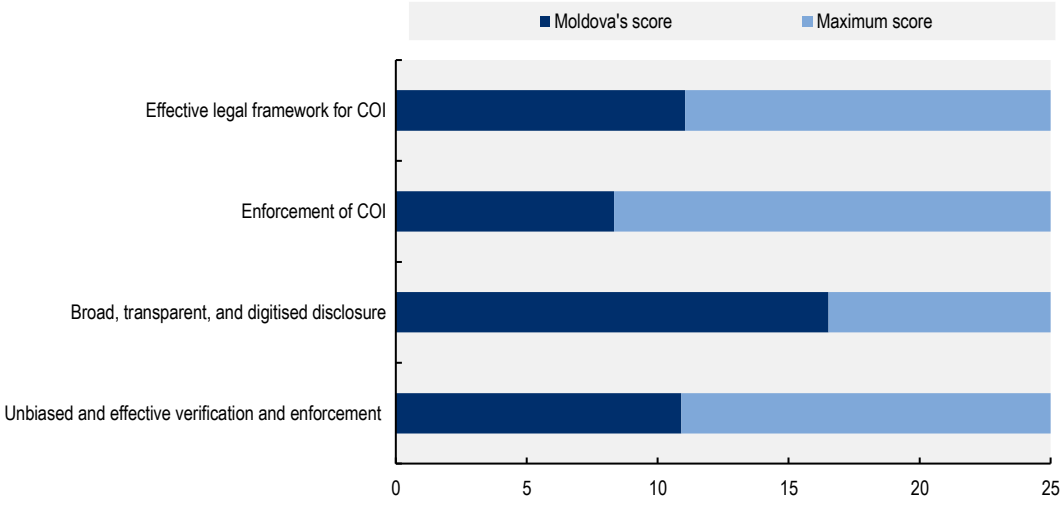


Figure 2.2. Performance level for Conflict of Interest and Asset Declaration by indicators.



Indicator 2.1. An effective legal framework for managing conflict of interest is in place

Background

A number of laws in Moldova are relevant to the regulation of conflict of Interest (COI). The Law on Integrity establishes the general integrity requirements for “public agents” (a definition which includes both political officials and professional members of the civil service) and public institutions, identifies “compliance with the legal regime of conflicts of interest” as one of the “measures designed to ensure institutional integrity” and outlines the general responsibilities of the relevant persons and institutions in terms of COI prevention. The Law on Declaration of Assets and Persons Interests contains more detailed provisions on how cases of COI are to be resolved. Finally, the Law on the National Integrity Authority (NIA) defines the powers and the responsibilities of the institution which plays a key role in the enforcement of COI rules.

Assessment of compliance

Benchmark 2.1.1.

The legislation extends to and includes a definition of the following concepts applicable to public officials, in line with international standards:

Element	Compliance
A. Actual and potential conflict of interest	✓
B. Private interests that include any pecuniary and non-pecuniary advantage to the official, his or her family, close relatives, friends, other persons, or organisations with whom the official has personal, political, or other associations	✓
C. An apparent conflict of interest	X

A – compliant. Moldova's legislation contains the definition of both actual and potential conflict of interest. Actual conflict of interest is defined as a situation where an official has to "approve an application, issue an administrative act, conclude a deal personally or through another person, make or participate in the making of a decision in which they have a personal interest or which concerns physical or legal persons that they have close relations with, that they have property relations with and that influence or can influence unbiased and objective exercise of powers, a public office or an important state office." A potential conflict of interest is defined as a situation where an official's "personal interests can lead to the emergence of an actual conflict of interest." Both definitions meet the relevant standards that this benchmark is based on.

B – compliant. Moldova's anti-corruption legislation contains two separate definitions of private interests. The Law on Integrity (Article 3) defines private interests as "(personal or group) interests of physical persons, as well as persons or legal entities with close (institutional, corporate or client) relations to them, concerning the exercise of rights and freedoms, inter alia with the purpose of obtaining property, services, advantages, any form of benefits, offers or promise of such." The definition more relevant to this benchmark appears in Article 2 of the Law on Declaration of Assets and Interests which regulates COI: "Any material or immaterial interest of the subject of the declaration resulting from his/her activities as a private person, from his/her relations with those close to him/her or with legal persons and other economic entities, regardless of the property type, from his/her relations or affiliations with non-commercial organisations,

including political parties, or with international organisations." The definition meets the criteria of the benchmark.

C – non-compliant. Moldova's legislation does not contain the concept of apparent conflict of interest.

Benchmark 2.1.2.

The legislation assigns the following roles and responsibilities for preventing and managing ad hoc conflict of interest:

Element	Compliance
A. Duty of an official to report COI that emerged or may emerge	✓
B. Duty of an official to abstain from decision-making until the COI is resolved	✓
C. Duties of the managers and dedicated bodies/units to resolve COI reported or detected through other means	x

The Law on the Declaration of Assets and Personal Interests (Articles 11-15) assigns responsibilities for preventing, reporting and managing COI.

A -- compliant. Potential conflicts of interest are to be reported as part of the regular disclosure of assets and interests (via asset declarations). As for an actual conflict of interest, the person in question is required to inform their immediate superior official or body about the COI immediately or within three days of establishing its existence.

B – compliant. The law requires an official to abstain from any actions or decisions in their official capacity until the COI is resolved.

C – non-compliant. The law assigns the responsibility for the resolution of reported COI to the officials in question, the heads of the relevant public institutions, the NIA and the Integrity Council. Heads of public bodies are required to designate a person who will keep a register in which each declaration of a COI is to be included. In the case of high-level public officials who have no immediate superiors, COIs are to be reported to the National Integrity Authority (also within three days from their occurrence) which is responsible for keeping a register of such disclosures. The NIA's officials and inspectors report their COI to the Integrity Council. The law provides a range of options for COI resolution (see Benchmark 1.3) that the relevant managers/bodies can choose from.

As far as COI detected through other means is concerned, under Article 37 of the Law on National Integrity Authority, the NIA is to start a review ("control") of COI cases based either on the results of verification of an official's asset declarations or complaints by physical or legal persons (including anonymous complaints), as well as information from open sources. However, there are no similar provisions concerning the resolution of COI detected through other sources by the managers of public entities. While, under Article 13 of the Law on the Declaration of Assets and Personal Interests, they "must not intentionally allow individuals working in the public organisation which they manage to exercise their official duties while being in a situation of actual conflict of interests," it is debatable whether this provision is sufficient to ensure that the managers address cases of COI detected beyond the self-reporting procedure.

Benchmark 2.1.3.

The legislation provides for the following methods of resolving ad hoc conflict of interest:

Element	Compliance
A. Divestment or liquidation of the asset-related interest by the public official	X
B. Resignation of the public official from the conflicting private-capacity position or function, or removal of private interest in another way	X
C. Recusal of the public official from involvement in an affected decision-making process	✓
D. Restriction of the affected public official's access to particular information	✓
E. Transfer of the public official to duty in a non-conflicting position	X
F. Re-arrangement of the public official's duties and responsibilities	✓
G. Performance of duties under external supervision	X
H. Resignation/dismissal of the public official from their public office	X

Article 14 of the Law on the Declaration of Assets and Personal Interests establishes a number of methods for COI resolution.

A – non-compliant. The legislation does not provide for the resolution of COI through the divestment or liquidation of the asset-related interest by the public official.

B – non-compliant. The legislation does not provide for the resolution of COI through the resignation of the public official from the conflicting private-capacity position or function, or removal of private interest in another way.

C – compliant. Under the law, an official can resolve a COI by refraining from adopting the relevant decision or participation in the relevant decision-making, while informing all relevant parties about this.

D – Compliant. The legislation provides for the resolution of COI through the restriction of the affected public official's access to particular information.

E – non-compliant. Although the legislation provides for the resolution of COI through the transfer of the public official to duty in a non-conflicting position, such transfer requires the consent of the official in question, which undermines the effectiveness of this method.

F – compliant. The legislation provides for the resolution of COI through a "re-distribution of the tasks and the duties" of an official.

G – non-compliant. The legislation does not provide for the resolution of COI through the performance of duties under external supervision.

H – non-compliant. Resignation or dismissal are not listed among the methods of COI resolution in the relevant legal provision (Article 14 of the Law on Declaration of Assets and Personal Interests). However, Moldova has pointed to another provision (Article 39 of the Law on National Integrity Authority) whereby an integrity inspector can request an official's termination as a sanction for their failure to report or resolve COI. However, this element of the benchmark refers to methods of COI resolution, rather than sanctions for the failure to resolve COI.

Benchmark 2.1.4.

The legislation provides for the following methods of resolving ad hoc conflict of interest:

Element	Compliance
A. Specific methods for resolving conflict of interest in the collegiate (collective) state bodies	x
B. Specific methods for resolving conflict of interest for top officials who have no direct superiors	✓

A – non-compliant. There are no specific methods for resolving COI in collegiate state bodies. The general methods detailed in Benchmark 1.3 apply to the members of such bodies. Moldova highlighted a provision in the Law on Declaration of Assets and Personal Interests (Art. 14, Par. 4) whereby an official "can resolve the actual conflict of interest refraining from resolving the request, from issuing/adopting the administrative act, from concluding the legal act, from participating in a decision making or voting, informing all the parties concerned by that decision regarding the measures taken to protect the fairness of the decision-making process." While this provision could, indeed, be relevant to the member of collegiate state bodies, it is not specific to collegiate bodies, and it also leaves it up to the officials to decide whether or not to abstain from participation in decision-making when a conflict of interest exists (without establishing a clear guidance of any subsequent steps by the relevant authorities). Moldova cannot therefore be considered compliant with this element.

B – compliant. Specific methods of COI resolution for top official who have no direct superiors are established by Articles 12 and 14 of the Law on Declaration of Assets and Personal Interests. Such officials are to report their COI to the NIA which can subsequently recommend that they delegate the relevant responsibility to a third person or exercise their relevant power (by issuing an act, adopting a decision or participating in decision-making) if delegation is not possible.

Benchmark 2.1.5.

There are special conflict of interest regulations or official guidelines for:

Element	Compliance
A. Judges	x
B. Prosecutors	x
C. Members of Parliament	x
D. Members of Government	x
E. Members of local and regional representative bodies (councils)	x

The public officials listed under different elements of this benchmark are covered by Moldova's general COI regulations described in previous sections of this chapter. However, Benchmark 1.5 requires existence of special regulations or guidelines tailored to specific risks of different types of positions which are currently absent in Moldova.

A – non-compliant. There are no special COI regulations or official guidelines for judges.

B – non-compliant. There are no special COI regulations or official guidelines for prosecutors.

C – non-compliant. There are no special COI regulations or official guidelines for members of Parliament.

D – non-compliant. There are no special COI regulations or official guidelines for members of Government.

E – non-compliant. There are no special COI regulations or official guidelines for members of local and regional councils.

Indicator 2.2. Regulations on conflict of interest are properly enforced

Assessment of compliance

Benchmark 2.2.1.

Sanctions are routinely imposed on public officials for the following violations:

Element	Compliance
A. Failure to report an ad hoc conflict of interest	✓
B. Failure to resolve an ad hoc conflict of interest	X
C. Violation of restrictions related to gifts or hospitality	X
D. Violation of incompatibilities	✓
E. Violation of post-employment restrictions	✓

A – compliant. Moldova provided the monitoring team with three cases where NIA sanctioned, in 2022, public officials for their failure to report an ad hoc COI with the prohibition to hold public office for a period of three years.

B – non-compliant. Moldova provided the monitoring team with three cases where public officials were sanctioned for their failure to resolve their own COI. However, this element of the benchmark refers to cases where a manager/head of agency receives a report from a public official about the official's COI and fails to act on the report by resolving COI of the official.

C – non-compliant. There were no such cases in Moldova during the assessment period. The Law on Integrity (Article 16) requires heads of public entities to ensure "disciplinary responsibility" of their employees who violate the rules on gifts. Moldova provided no information regarding any further legislative provisions establishing sanctions for violations concerning gifts and hospitality.

D – compliant. Moldova provided the monitoring team with three cases where NIA sanctioned public officials for violation of the rules on incompatibilities with the prohibition to hold public office for a period of three years.

E – compliant. Moldova provided the monitoring team with three cases where NIA sanctioned public officials for violation of post-employment restrictions with the prohibition to hold public office for a period of three years.

Benchmark 2.2.2.

Sanctions are routinely imposed on high-level officials for the following violations:

Element	Compliance
A. Violation of legislation on prevention and resolution of ad hoc conflict of interest	✓
B. Violation of restrictions related to gifts or hospitality	X
C. Violation of incompatibilities	✓
D. Violations related to requirements of divesting ownership rights in commercial entities or other business interests	X
E. Violation of post-employment restrictions	X

A – compliant. Moldova provided the monitoring team with three cases where high-level public officials (heads of central state agencies who were also politically exposed persons under the country's anti-money laundering legislation) were sanctioned by the NIA, in 2022, for violation of legislation on prevention and resolution of ad hoc COI with the prohibition to hold public office for a period of three years, as well as a fine.

B – non-compliant. There were no such cases in Moldova during the assessment period. Moldova provided no information regarding any legislative provisions establishing sanctions for violation of restrictions on gifts and hospitality by high-level officials and it appears that no such sanctions are in place.

C – compliant. Moldova provided the monitoring team with tree cases where violation of the rules on incompatibilities by public officials (mayors, who were politically exposed persons under the country's anti-money laundering legislation) was established and fines were imposed.

D – non-compliant. There were no such cases in Moldova during the assessment period.

E – non-compliant. There were no such cases in Moldova during the assessment period.

Benchmark 2.2.3.

The following measures are routinely applied:

Element	Compliance
A. Invalidated decisions or contracts as a result of a violation of conflict-of-interest regulations	X
B. Confiscated illegal gifts or their value	X
C. Revoked employment or other contracts of former public officials concluded in violation of post-employment restrictions	X

A – non-compliant. There were no such cases in Moldova during the assessment period. According to Moldova, there were 15 such cases over the preceding three years. While this is not relevant for the assessment of compliance in 2022, it does indicate that sanctions are established in the law and there is also practice of their application.

B – non-compliant. There were no such cases in Moldova during the assessment period. It is not clear whether the legislation contains any provisions concerning confiscation of illegal gifts. Moldova did not provide the monitoring team with relevant information regarding the law.

C – non-compliant. There were no such cases in Moldova during the assessment period. Moldova's legislation does not explicitly provide for the possibility of revoking employment or other types of contracts of former public officials which violate post-employment restrictions.

Indicator 2.3. Asset and interest declarations apply to high corruption risk public officials, have a broad scope, and are transparent for the public and digitized

Background

The Law on the Declaration of Assets and Personal Interests is Moldova's primary piece of legislation governing the disclosure of assets and interests, while the Contravention Code and the Criminal Code establish administrative and criminal sanctions for relevant offences. The National Integrity Authority (NIA) is the body responsible for collecting and verifying the asset declarations.

Assessment of compliance

Benchmark 2.3.1.

The following officials are required to declare their assets and interests annually:

Element	Compliance
A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies	✓
B. Members of collegiate central public authorities, including independent market regulators and supervisory authorities	✓
C. Head and members of the board of the national bank, supreme audit institution	✓
D. The staff of private offices of political officials (such as advisors and assistants)	✓
E. Regional governors, mayors of cities	✓
F. Judges of general courts, judges of the constitutional court, members of the judicial governance bodies	✓
G. Prosecutors, members of the prosecutorial governance bodies	✓
H. Top executives of SOEs	✓

The circle of public officials who are required to declare their assets and interests annually is established by Article 3 of the Law on Declaration of Assets and Personal Interests and the annex to the Law on the Status of Persons Holding Responsible State Positions.

A – compliant. The requirement to declare assets and interests annually applies to the President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies.

B – compliant. The requirement to declare assets and interests annually applies to the members of collegiate central public authorities, including the members of the National Financial Market Commission,

the Central Electoral Commission, the Coordination Council on Television and Radio and the Supervisory Council of the National Bank of Moldova. It appears that all collegiate independent market regulators and supervisory authorities are covered.

C – compliant. The requirement to declare assets and interests annually applies to the head and members of the board of the National Bank of Moldova and the supreme audit institution.

D – compliant. The requirement to declare assets and interests annually applies to the "employees of the offices of persons holding responsible state positions."

E – compliant. The requirement to declare assets and interests annually applies to the regional governors and mayors of cities.

F – compliant. The requirement to declare assets and interests annually applies to the judges of general courts, judges of the constitutional court, members of the judicial governance bodies.

G – compliant. The requirement to declare assets and interests annually applies to prosecutors and members of the prosecutorial governance bodies.

H – compliant. The requirement to declare assets and interests annually applies to "heads of public organisations and their deputies." The definition of a "public organisation" under the law covers SOEs.

Benchmark 2.3.2.

The legislation or official guidelines require the disclosure in the declarations of the following items:

Element	Compliance
A. Immovable property, vehicles and other movable assets located domestically or abroad	✓
B. Income, including its source	✓
C. Gifts including in-kind gifts and payment for services and indicating the gift's source	✓
D. Shares in companies, securities	✓
E. Bank accounts	✓
F. Cash inside and outside of financial institutions, personal loans given	X
G. Financial liabilities, including private loans	✓
H. Outside employment or activity (paid or unpaid)	X
I. Membership in organizations or their bodies	✓

The list of items to be included in an official's asset declaration is established through Article 4 of the Law on Declaration of Assets and Personal Interests and its Annex No 1.

A – compliant. The law requires officials to declare immovable property, vehicles and other movable assets located domestically or abroad. The declaration form explicitly requires disclosure of asset held domestically and abroad.

B – compliant. The law and declaration form require officials to declare income, including its source.

C – compliant. The law states that the gifts whose total value does not exceed 10 average salaries are exempt from the disclosure requirement, which means that other gifts must be declared (as part of income).

There is a separate field for gifts in the declaration form ("income in the form of gifts or inheritance) where the declarant must specify the "service rendered/item yielding income", along with its source.

D – compliant. The law requires officials to declare shares in companies and securities.

E – compliant. The law requires officials to declare their bank accounts.

F – non-compliant. The law requires officials to declare cash held outside financial institutions. There is, however, no explicit requirement to declare the cash held in financial institutions or personal loans given (i.e. the loans where the declarant is the creditor).

G – compliant. The law requires officials to declare loans and other financial liabilities.

H – non-compliant. The requirement to declare outside employment or activity is established through the requirement to declare income and indicate its source. Consequently, there is no duty to declare unpaid activities. Also, the declaration form only includes fields for income from the types of outside employment that are allowed by the law (academic work, arts, etc.), so other possible types of outside employment (which may be incompatible with public office) can remain undeclared.

I – compliant. The law requires officials to declare their membership in organisations and their bodies.

Benchmark 2.3.3.

The legislation or official guidelines contain a definition and require the disclosure in the declarations of the following items:

Element	Compliance
A. Beneficial ownership (control) of companies, as understood in FATF standards, domestically and abroad (at least for all declarants mentioned in Benchmark 3.1.), including identification details of the company and the nature and extent of the beneficial interest held	✓
B. Indirect control (beneficial ownership) of assets other than companies (at least for all declarants mentioned in Benchmark 3.1.), including details of the nominal owner of the respective asset, description of the asset, its value	✓
C. Expenditures, including date and amount of the expenditure	X
D. Trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust's settlor, trustees, and beneficiaries	X
E. Virtual assets (for example, cryptocurrencies), including the type and name of the virtual asset, the amount of relevant tokens (units), and the date of acquisition	✓

A – compliant. Article 2 of the Law on Declaration of Assets and Personal Interests defines a beneficial owner as a "natural person ultimately controlling another natural person or who owns or ultimately controls a legal entity or the beneficiary of an investment company or the administrator of an investment company or the person on whose behalf a transaction is carried out or an activity and/or who owns directly or indirectly the ownership right or control over at least 25% of the shares or voting rights of the legal entity or of the assets under fiduciary administration." Article 4 of the same law requires public officials to declare ownership of companies, including beneficial ownership. The declaration form includes fields for the name and legal address of the company, type and extent of ownership. According to Moldova, a field for a

company's identification number also appears when officials long onto the system and file the information electronically.

B – compliant. The law requires public officials to declare beneficial ownership of financial and other assets (such as movable and immovable property). The declaration form includes fields on the details of the nominal owner of the asset in question, description of the asset and its value.

C – non-compliant. The law only requires declaration of expenses on services (with the total value above 10 average monthly salaries).

D – non-compliant. There is no requirement to declare trusts.

E – compliant. The law requires public officials to declare virtual assets, including virtual currencies, with the total value above 10 average monthly salaries. The declaration form includes fields for the name, amount and acquisition date of the asset.

Benchmark 2.3.4.

	Compliance
The legislation or official guidelines require the disclosure in the declarations of information on assets, income, liabilities, and expenditures of family members, that is, at least spouse and persons who live in the same household and have a dependency relation with the declarant	✓

Compliant. The law states that all provisions concerning the declaration of assets and personal interests also apply to those of the declarant's family members and partner. The definition of a family member includes a spouse, a minor child, and a dependant. A dependant is defined as a person who lives in the same household as the declarant or has a contract of lifelong financial support with the declarant, and whose annual income does not exceed two average salaries across the economy.

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	✓

Compliant. The declarations are filed through an online platform that the NIA operates. The only exception is the declarations of the officials from the Security and Intelligence Service, the National Anti-Corruption Centre and the Ministry of Internal Affairs whose identity is a state secret: These are filed in a physical form and are handled by special commissions established in the relevant public institutions.

Benchmark 2.3.6.

Information from asset and interest declarations is open to the public:

Element	Compliance
A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect the privacy and personal security	X
B. Information from asset and interest declarations is published online	✓
C. Information from asset and interest declarations is published online in a machine-readable (open data) format	X
D. Information from asset declarations in a machine-readable (open data) is regularly updated	X

A – non-compliant. The information from asset and interest declarations is open to the public by default. Article 9 of the law lists the types of information from the declaration that are not to be published. While some of the exceptions meet the criteria of this element of the benchmark (such as personal ID numbers of the declarants and their family members, residential address), complete exclusion of certain declared assets (cash held outside financial institutions, precious stones, works of art, etc) from published information does not. Moldova has noted that these exclusions stem from the requirements of national legislation on personal data protection.

B – compliant. Article 9 of the law requires the NIA to publish the declarations online and this is also done in practice.

C – non-compliant. The information is not currently published in a machine-readable format.

D – non-compliant. See above.

Benchmark 2.3.7.

Functionalities of the electronic declaration system include automated cross-checks with government databases, including the following sources:

Element	Compliance
A. Register of legal entities	X
B. Register of civil acts	X
C. Register of land titles	X
D. Register of vehicles	X
E. Tax database on individual and company income	X

A-E – non-compliant. According to Moldova, a government interoperability platform ensures interaction and data exchange between the e-integrity system (where asset declarations are filed) and the electronic public registries which exist in Moldova. However, according to Moldova, cross-checking between the declaration system and these databases requires a human intervention. The monitoring team has been unable to ascertain the exact degree of this intervention and cannot consider Moldova compliant.

Indicator 2.4. There is unbiased and effective verification of declarations with enforcement of dissuasive sanctions

Background

The responsibility for the verification of the declarations is assigned to the NIA, according to Article 5 of the Law on the National Integrity Authority. Overseeing the system of asset disclosure is one of the two main responsibilities of the institution, the other being ensuring compliance with COI regulations.

Assessment of compliance

Benchmark 2.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency, unit, or staff and is implemented in practice:

Element	Compliance
A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%) OR	A (70%)
B. Verification of declarations is assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations and is responsible only for such verification and not for other functions (100%)	

Compliant (A): Within the NIA, the responsibility to carry out verification of declarations is assigned to integrity inspectors. Integrity inspectors have the responsibility for verifying asset declarations along with reviewing cases of conflict of interest-related violations, including those identified outside of asset declaration the verification. Since the responsibility to monitor COI is closely linked to the verification of asset declarations, the monitoring team considers that Moldova meets the option A under this benchmark.

Benchmark 2.4.2.

Verification of asset and interest declarations, according to legislation and practice, aims to detect:

Element	Compliance
A. Conflict of interest (ad hoc conflict of interest or other related situations, for example, illegal gifts, incompatibilities)	✓
B. False or incomplete information	✓
C. Illicit enrichment or unjustified variations of wealth	✓

A – compliant. The legislation clearly establishes detection of COI as one of the aims of verification. Under Article 19 of the Law on the NIA, an integrity inspector's responsibilities include the "monitoring of assets and compliance with the legal regime of conflict of interest, incompatibilities, prohibitions and restrictions." Under Article 27 of the NIA Law, possible outcomes of verification include detection of an official's failure to comply with COI regulations, incompatibilities, and other restrictions. According to Moldova, two cases of such violations were detected in 2022 through verification of asset declarations.

B – compliant. The legislation clearly establishes detection of false or incomplete information as one of the aims of verification. Under Article 27 of the NIA Law, following the completion of verification, an integrity official can report (via a formal protocol) that an official has made inaccurate or incomplete disclosure of assets and personal interests. According to Moldova, eight cases of such violations were detected in 2022.

C – compliant. The legislation clearly establishes detection of illicit enrichment and unjustified variations of wealth as one of the aims of verification. Article 19 of the NIA Law requires integrity inspectors to record "significant" variations in the assets of a public official, as well as discrepancies between income and expenses. Under Article 27, following the completion of verification, an integrity inspector can report the "signs of significant discrepancies" between an official's income, expenses and acquisition of assets. However, according to Moldova, no such violations were detected in 2022.

Benchmark 2.4.3.

A dedicated agency, unit, or staff dealing with the verification of declarations has the following powers clearly stipulated in the legislation and routinely used in practice:

Element	Compliance
A. Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities	✓
B. Have access to registers and databases which are held/administered by domestic public authorities and are necessary for the verification	✓
C. Access information held by the banking and other financial institutions: with prior judicial approval (50%) or without such approval (100%)	✓
D. Have access to available foreign sources of information, including after paying a fee if needed	X
E. Commissioning or conducting an evaluation of an asset's value	X
F. Providing ad hoc or general clarifications to declarants on asset and interest declarations	✓

A – compliant. Under Article 20 of the Law on the National Integrity Authority, integrity inspectors have the right to "request, free of charge and obtain the necessary information from any natural person or legal entity, of public or private law, on paper and/or electronically, for the performance of the duties of verification and/or control of personal assets and interests, as well as for the verification and/or control of compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations." According to Moldova, 6,018 such requests were filed in 2022 and the information was provided in 6,013 cases. Although the law does not explicitly establish the power to request and obtain confidential and restricted information, Moldova confirmed during the on-site visit that professional and banking secrecy cannot be invoked to withhold information. Under Article 32 para 3-4 of NIA Law, financial institutions are expressly mentioned alongside natural and legal persons as under the obligation to provide the information required by the NIA (and the provision establishes no exceptions from the duty to provide the agency with the relevant information). Moldova presented to the monitoring team three relevant examples of the use of this power.

B – compliant. Under Article 20 of the Law, integrity inspectors have "free online access" to public registries for the purpose of verification. According to Moldova, such access was used on approximately 12,000 occasions in 2022. Moldova presented to the monitoring team three relevant examples of the use of this power.

C – compliant. According to Moldova, the provision in Article 20 of the law cited in element A of this benchmark also applies to the information held by banks and other financial institutions, and no prior judicial approval is required for the provision of such information. According to Moldova, access to such information was obtained in 1,812 cases in 2022. Moldova presented to the monitoring team three relevant examples of the use of this power.

D – non-compliant. The NIA does not have access to foreign sources of information, with the partial exception of international organisations and associations.

E – non-compliant. Under Article 20, Paragraph 1, as well as Article 33, Paragraph 11 of the Law, an integrity inspector can conduct or request an evaluation of an asset's value. However, according to Moldova, no such evaluations were conducted in 2022.

F – compliant. Under Article 7 of the Law, the NIA prepares guidelines on the filing of asset declarations and offers consultations to the declarants. According to Moldova, 2,106 clarifications were issued in 2022. Moldova presented to the monitoring team three relevant examples.

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

Element	Compliance
A. Declarations of persons holding high-risk positions or functions	X
B. Based on external complaints and notifications (including citizens and media reports)	✓
C. Ex officio based on irregularities detected through various, including open sources	X
D. Based on risk analysis of declarations, including based on cross-checks with the previous declarations	X

There are two types of verifications in Moldova: control of declarations and control of assets and private interests. The former is a formal check of a submitted declaration's compliance with the relevant requirements and is performed for all declarations filed in a given year. The latter is a thorough review of a declaration and is performed for a smaller number of declarations, usually when the control of declaration reveals an irregularity or based on reports in the media. This benchmark considers only an in-depth verification of asset declarations.

A – non-compliant. The Law on the National Integrity Authority (Article 27), at least 30 percent of the declarations verified in a year have to be those of the President, deputies, ministers, secretaries of state, judges, prosecutors, heads of autonomous public institutions/authorities. According to Moldova, 1,176 such declarations were verified in 2022. However, neither statistics nor three examples of in-depth verification (control) were provided, so Moldova cannot be considered compliant with this element.

B – compliant. According to Moldova, 590 verifications were triggered by external complaints and notifications in 2022. Moldova provided the monitoring team with three examples of such verification.

C – non-compliant. According to Moldova, there were no ex officio verifications based on irregularities detected through various, including open, sources in 2022.

D – non-compliant. There is no systematic verification based on risk analysis or cross-checks with previous declarations. According to Moldova, declarations of officials from the Agency for Consumer Protection and Market Surveillance (50 in total) were selected for verification in 2022 following the NAC's detection of the

involvement of the Agency's four employees in corruption the previous year. However, this appears to have been a one-off case, rather than part of a regular process.

Benchmark 2.4.5.

The following measures are routinely applied:

Element	Compliance
A. Cases of possible conflict of interest violations (such as violations of rules on ad hoc conflict of interest, incompatibilities, gifts, divestment of corporate ownership rights, post-employment restrictions) detected based on the verification of declarations and referred for follow-up to the respective authority or unit	X
B. Cases of possible illicit enrichment or unjustified assets detected based on the verification of declarations and referred for follow-up to the respective authority or unit	X
C. Cases of violations detected following verification of declarations based on media or citizen reports and referred for follow-up to the respective authority or unit	X

A – non-compliant. According to Moldova, there were no such cases in 2022.

B – non-compliant. According to Moldova, there were no such cases in 2022.

C – non-compliant. According to Moldova, there were no such cases in 2022.

Benchmark 2.4.6.

The following sanctions are routinely imposed for false or incomplete information in declarations:

Element	Compliance
A. Administrative sanctions for false or incomplete information in declarations	X
B. Criminal sanctions for intentionally false or incomplete information in declarations in cases of significant amount as defined in the national legislation	X
C. Administrative or criminal sanctions on high-level officials for false or incomplete information in declarations	X

A – non-compliant. Moldova's legislation does not provide for the application of administrative sanctions for false or incomplete information in declarations. Criminal sanctions are in place instead.

B – non-compliant. According to Moldova, there were no such cases in 2022.

C – non-compliant. According to Moldova, there were no such cases in 2022.

Assessment of non-governmental stakeholders

According to the monitoring team's CSO interlocutors, at the time of the on-site visit, the NIA was understaffed, with less than half of the integrity inspectors' positions currently filled. According to Moldova, 29 of the 43 positions of inspectors in the NIA (67.5 percent) were filled.

3 Protection of whistleblowers

Moldova's legislation guarantees protection to individuals who report corruption at their workplace. The precondition of reporting in good faith and the public interest test are problematic. Protection extends to all relevant categories of whistleblowers, including those employed in the public and the private sectors, SOEs and defence and security institutions. Some important types of safeguards (such as protection of a whistleblower's identity and protection from retaliation at workplace) are in place, but others are not (such as protection of personal safety and release from liability linked with the disclosure). The law also does not contain provisions on consultation on protection, free legal aid or reinstatement (although it does entitle whistleblowers to compensation).

Whistleblowers can report internally at their workplace or to the designated public institution (the NAC), or they can opt to make a public disclosure under specific conditions. Not all public institutions have set up internal reporting channels in practice. There is no dedicated central electronic platform for reporting (although reports can be filed through the NAC website). Anonymous whistleblower reports are not allowed under the law, and individuals who report anonymously are not entitled to protection.

The responsibility for whistleblower protection is assigned to the People's Advocate (Ombudsman), but the institution has no unit or staff dealing exclusively with whistleblowers. The expansion of the institution's mandate to cover whistleblower protection has not been followed by an increase its

human or financial resources or provision of relevant training. The People's Advocate also lacks appropriate powers to effectively review whistleblower appeals and provide protection.

The data on the application of whistleblower protection law in practice is very limited. The People's Advocate only received three applications in 2022 and none of these qualified for protection.

Figure 3.1. Performance level for Protection of Whistleblowers is average.

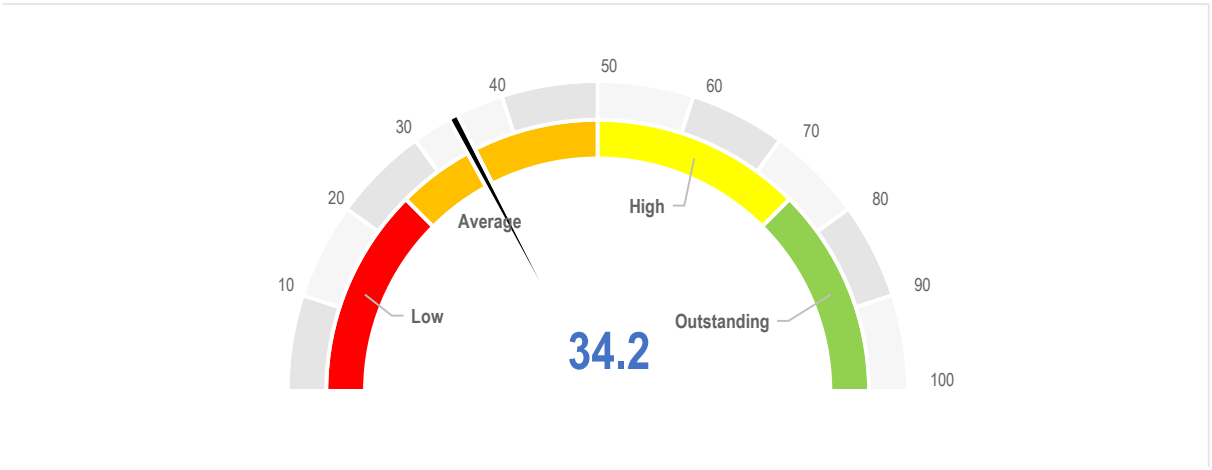
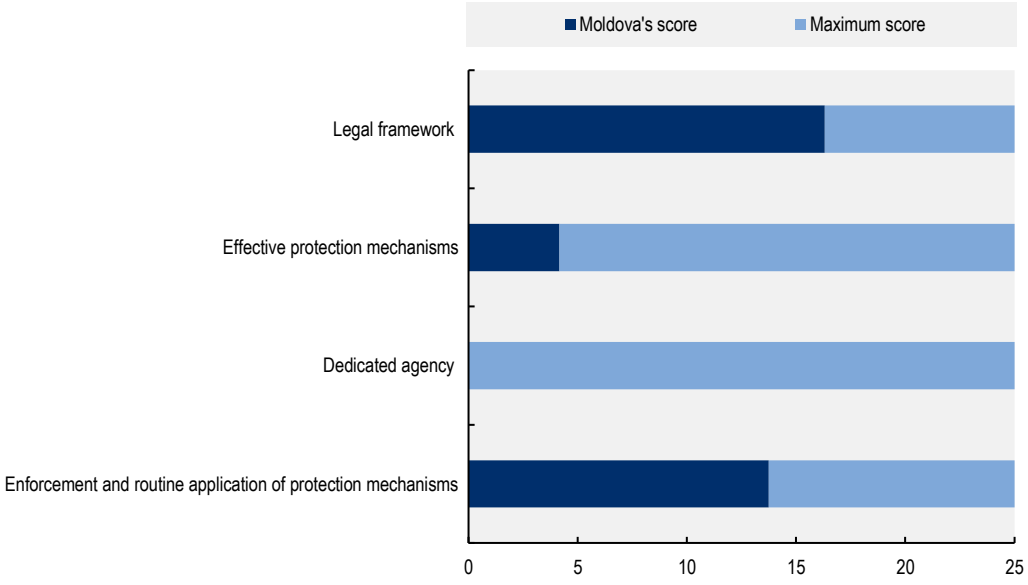


Figure 3.2. Performance level for Protection of Whistleblowers by indicators.



Indicator 3.1. The whistleblower's protection is guaranteed in law

Background

Whistleblower protection in Moldova was regulated in 2022 by the Law on Informers on Integrity (whistleblower protection law), which established the scope of protection and the procedures for reporting and consideration of reports, and also defines the bodies responsible for the enforcement of the relevant provisions. The law was subsequently repealed and replaced by new legislation in 2023, which is outside the timeframe of this assessment and is thus not covered in this report. There is also a Regulation on the procedures for the examination and internal reporting of disclosures of illegal practices approved by a government decision.

Assessment of compliance

Benchmark 3.1.1.

The law guarantees the protection of whistleblowers:

	Element	Compliance
A.	Individuals who report corruption-related wrongdoing at their workplace that they believed true at the time of reporting	✓
B.	Motive of a whistleblower or that they make a report in good faith are not preconditions to receiving protection	✓
C.	If a public interest test is required to qualify for protection, corruption-related wrongdoing are considered to be in public interest, and their reporting qualifies for protection by default	X

Note: Corruption-related wrongdoing means that the material scope of the law should extend to: 1) corruption offences (see definition in the introductory part of this guide); and 2) violation of the rules on conflict of interest, asset and interest declarations, incompatibility, gifts, other anti-corruption restrictions. At their workplace means that a report is made based on information acquired through a person's current or past work activities in the public or private sector. As such, citizen appeals are not covered.

A – compliant. Under Article 6 of the whistleblower protection law, protection is to be granted to an individual who had a reasonable ground to believe that the report concerning wrongdoing was true. Article 11 of the Law explicitly links the report to the wrongdoing at the workplace by requiring that the whistleblower report concerns an entity in which the person is an employee.

B – compliant. Article 3 of the law defines a whistleblower as an "employee who makes an integrity report", while "integrity report" is defined as a "disclosure in good faith by an employee of an illegal practice that constitutes a threat or harm to the public interest." The law contains confusing provisions on the required good faith. Article 3 defines good faith as a standard of conduct that means correctness, honesty and accountability. Article 6 understands the good faith as the truthful reporting or reporting which the person believed to be true. The law also sets the presumption of good faith of a whistleblower report. If it established that the reported information was false, and the person knew or should have known that the reported information was false, then the person is not considered whistleblower and is not entitled to protection.

Although the Moldovan whistleblower protection law contains a requirement of good faith, it is understood as truthfulness of the report and is not linked to the motives of the whistleblower. There is also a presumption of good faith. Moldova is compliant with this element.

C – non-compliant. The definition of whistleblower report ("integrity report") contains a reference to public interest ("disclosure in good faith by an employee of an illegal practice that constitutes a threat or harm to the public interests"). Moldova has pointed out that the law's definition of "illegal practice" does, in turn, contain "manifestations of corruption." However, the definition of “integrity report” clearly limits illegal practices only to those that constitute a threat or harm to the public interest. There is also no practice that would show that any reporting of a corruption offence, regardless of the threat or harm to public interest, would qualify for protection.

Benchmark 3.1.2.

Whistleblower legislation extends to the following persons who report corruption-related wrongdoing at their workplace:

Element	Compliance
A. Public sector employees	✓
B. Private sector employees	✓
C. Board members and employees of state-owned enterprises	✓

Note: Whistleblower legislation means all legal provisions defining whistleblowing, reporting procedures and protections provided to whistleblowers.

A – compliant. The law defines a whistleblower as an "employee who makes an integrity report." The definition of "employee" is linked to the term “employer" defined as a "public or private entity" which entered into labour or civil law contractual relationships with an employee. Therefore, the law extends to both public and private sector employees.

B – compliant. See above.

C – compliant. According to Moldova, board members and employees of state-owned enterprises are considered public sector employees and are therefore covered by the law. Given the broad coverage of the law described in element A of this benchmark, it applies to both public and private organisations.

Benchmark 3.1.3.

Element	Compliance
Persons employed in the defence and security sectors who report corruption-related wrongdoing benefit from equivalent protections as other whistleblowers	✓

Compliant. The general whistleblower protection legislation applies, in principle, to the employees of all types of institutions and does not contain any exceptions concerning the defence and security sectors. At the same time, during the monitoring team's on-site visit, Moldovan authorities noted that they only have limited information about internal WB protection regulations in the defence and security bodies. A representative of the Public Defender noted that, although the institution offers public bodies training on WB protection, the security agency has expressed no interest in such training so far. Given the absence of direct evidence that employees of defence and security bodies are excluded from the coverage of the

law, the monitoring team considers Moldova compliant, but urges the authorities to further clarify the issue in primary or secondary legislation in order to ensure appropriate protection.

Benchmark 3.1.4.

Element	Compliance
In administrative or judicial proceedings involving the protection of rights of whistleblowers, the law regulating respective procedure puts on the employer the burden of proof that any measures taken against a whistleblower were not connected to the report.	x

Non-compliant. Under Article 18 of the whistleblower protection law, it is the employer's responsibility to "demonstrate that the measures taken against the employee are not related to the integrity report or his involvement in any capacity in relation to an integrity report. Otherwise, the actions of the employer are considered revenge." However, this provision does not cover civil liability. It is also debatable whether this general provision would suffice for the protection of a whistleblower's rights in the absence of corresponding provisions in the special legislation regulating administrative and judicial proceedings, so the monitoring team invites Moldova to provide clarifications regarding the application of the existing provisions.

Benchmark 3.1.5.

The law provides for the following key whistleblower protection measures:

Element	Compliance
A. Protection of whistleblower's identity	✓
B. Protection of personal safety	x
C. Release from liability linked with the report	x
D. Protection from all forms of retaliation at the workplace (direct or indirect, through action or omission)	✓

A – compliant. Under Article 8 of the law, the whistleblower's identity shall not be disclosed or communicated to persons suspected of illegal practice unless the employee himself discloses or communicates his identity. The same article says that a whistleblower's personal data can only be disclosed as part of a criminal investigation launched over the disclosure.

B – non-compliant. The law does not appear to provide for the protection of a whistleblower's personal safety. The provision which Moldova cited in relation to this element of the benchmark concerns the protection of a whistleblower's personal data, while this element requires protection from threats to a person's life and safety.

C – non-compliant. Under Article 14 of the law, disciplinary sanctions imposed on a whistleblower after the disclosure either by the employer or by an administrative court are to be revoked. However, the law does not provide for the release of a whistleblower from other types of liability (e.g. criminal, civil) in connection with the disclosure.

D – compliant. Article 16 of the law explicitly requires the employer to protect a whistleblower from retaliation at the workplace. Article 3 of the law defines retaliation as "any form of pressure, disadvantage or discrimination in the workplace that is related to or results from the integrity report."

Benchmark 3.1.6.

The law provides for the following additional whistleblower protection measures:

Element	Compliance
A. Consultation on protection	X
B. State legal aid	✓
C. Compensation	✓
D. Reinstatement	✓

A – non-compliant. The law does not explicitly provide for consultation on protection. According to Moldova, in practice, whistleblowers are informed about their entitlement to protection upon submitting their reports.

B – compliant. The law does not explicitly provide for state legal aid for whistleblowers. However, whistleblowers can receive state legal aid if they meet the criteria of the dedicated law on state legal aid.

C – compliant. Under Article 14 of the whistleblower protection law, whistleblowers are entitled to "compensation for material and moral damages incurred as a result of retaliation."

D – compliant. The law does not explicitly provide for reinstatement for whistleblowers. However, whistleblowers can challenge in court any unlawful decisions by their employers (including dismissal) under general legislation on labour relations. While in court, the employer bears the burden of proof concerning the lawfulness of dismissal. The whistleblower protection law defines dismissal of a whistleblower as a form of reprisal.

Indicator 3.2. Effective mechanisms are in place to ensure that whistleblower protection is applied in practice

Assessment of compliance

Benchmark 3.2.1.

The following reporting channels are provided in law and available in practice:

Element	Compliance
A. Internal at the workplace in the public sector and state-owned enterprises	X
B. External (to a specialized, regulatory, law enforcement or other relevant state body)	✓
C. Possibility of public disclosure (to media or self-disclosure e.g., on social media)	✓
D. The law provides that whistleblowers can choose whether to report internally or through external channels	X

A – non-compliant. Article 7 of the whistleblower protection law establishes the possibility of internal reporting at the whistleblower's workplace. According to Moldova, the procedures for internal disclosures were established through a government decree, although this requirement does not yet extend to SOEs. In practice, some, but not all, public bodies have established a whistleblower disclosure register or designated a person responsible for receiving whistleblower reports, or both. There was one case of a whistleblower's report being filed through an internal channel in 2022.

B – compliant. Article 10 of the Law designates NAC as the public authority responsible for receiving and reviewing external disclosures. One report was filed via NAC in 2022.

C – compliant. Article 7 of the law establishes the possibility of a public disclosure by whistleblowers. No such disclosures took place in 2022.

D – non-compliant. Under Article 9 of the law, whistleblowers can only skip internal reporting and report externally or make a public disclosure, if certain conditions are met (they think the employer may be involved in the wrongdoing, or that there is a risk for evidence to be destroyed or confidentiality to be breached, or the employer has failed to properly act on the report).

Benchmark 3.2.2.

	Compliance
There is a central electronic platform for filing whistleblower reports which is used in practice	X

Non-compliant. There is currently no such platform in Moldova. The NAC website has a special section where whistleblower reports can be filed, but it does not have the functionalities of a specialised platform, such as collection, storage, use, protection, accounting, search, analysis of whistleblower reports, online data exchange with the whistleblower, anonymous reporting, the status of the report or feedback provided to the whistleblower, collection of whistleblower reports received by authorities acting as internal or external channels.

Benchmark 3.2.3.

Anonymous whistleblower reports:

Element	Compliance
A. Can be examined	X
B. Whistleblowers who report anonymously may be granted protection when they are identified	X

A – non-compliant. Article 11 of law explicitly requires disclosure of the identity of a report's author as a prerequisite for the person to be recognised as a whistleblower and for the report to be included in the register of whistleblower reports. Under the same article, reports that do not meet the relevant criteria (including the disclosure of identity) "shall be examined in accordance with the general rules", which means that they would not be treated as whistleblower reports. According to Moldova, the country's Administrative Code prohibits consideration of anonymous petitions, while the Code of Criminal Procedure states that anonymous complaints and denunciations cannot serve as the basis for a criminal investigation, although the latter can be launched based on the results of an investigation of such a complaint or denunciation. There were no anonymous whistleblower reports in Moldova in 2022.

B – non-compliant. The law (see above) explicitly denies the status of whistleblowing to reports filed without identification of the person.

Indicator 3.3. The dedicated agency for whistleblower protection has clear powers defined in law and is operational in practice

Assessment of compliance

Benchmark 3.3.1.

	Compliance
There is a dedicated agency, unit, or staff responsible for the whistleblower protection framework	X

Non-compliant. According to Moldova, the People's Advocate is the institution responsible for the whistleblower protection framework. However, the institution does not meet this benchmark's definition of "dedicated agency, unit or staff" since the unit within the institution responsible for whistleblower protection (the Department for the Management and Investigation of Requests) does not deal exclusively with whistleblowers. Furthermore, according to the Office of the People's Advocate, following the assignment of this role to the institution, there has been no corresponding increase in its financial or human resources and no specific training has been provided on whistleblower protection.

Benchmark 3.3.2.

A dedicated agency, unit or staff has the following key powers clearly stipulated in the legislation:

Element	Compliance
A. Receive and investigate complaints about retaliation against whistleblowers	X
B. Receive and act on complaints about inadequate follow up to reports received through internal or external channels or violations of other requirements of whistleblower protection legislation	X
C. Monitor and evaluate the effectiveness of national whistleblower protection mechanisms through the collection of statistics on the use of reporting channels and the form of protection provided	X

As noted in Benchmark 3.1, the institution responsible for whistleblower protection in Moldova (the People's Advocate) does not meet the definition of a dedicated agency, unit or staff under this indicator. Below is the assessment of the powers of the People's Advocate.

A – non-compliant. Under Article 16 of the whistleblower protection law, the People's Advocate "examines the request for protection of whistleblowers and contributes to their defence" according to the provisions of the Law on People's Advocate. The legislation does not therefore establish any specific investigative powers of the People's Advocate concerning whistleblower protection.

B – non-compliant. While the People's Advocate has no specific relevant powers with regard to violations of whistleblower protection legislation, under Article 16 of the law, the institution can receive and act on complaints concerning violations of human rights, by issuing recommendations and providing assistance in court proceedings. Moldova is considered non-compliant because the People's Advocate does not meet the criteria of a dedicated agency, unit or staff.

C – non-compliant. The legislation does not contain any specific provisions on this subject.

Benchmark 3.3.3.

The dedicated agency, unit or staff has the following powers clearly stipulated in the legislation:

Element	Compliance
A. Order or initiate protective or remedial measures	X
B. Impose or initiate imposition of sanctions or application of other legal remedies against retaliation	X

As noted in Benchmark 3.1, the institution responsible for whistleblower protection in Moldova (the People's Advocate) does not meet the definition of a dedicated agency, unit or staff under this indicator. Below is the assessment of the powers of the People's Advocate.

A – non-compliant. The legislation does not grant the People's Advocate such power.

B – non-compliant. The People's Advocate cannot directly impose sanctions or apply other legal remedies against retaliation. According to Moldova, the right of People's Advocate to represent individuals before public authorities or in courts "complex cases related to human rights and freedoms or in cases of public

interest" (including cases of whistleblower protection) amounts to the power to initiate imposition of sanctions.

Benchmark 3.3.4.

	Compliance
The dedicated agency, unit, or staff responsible for the whistleblower protection framework functions in practice	x

Non-compliant. As noted in Benchmark 3.1, the institution responsible for whistleblower protection in Moldova (the People's Advocate) does not meet the definition of a dedicated agency, unit or staff under this indicator. According to Moldova, the People's Advocate received seven complaints concerning retaliation against whistleblowers in 2022. Following the examination of these complaints, it was established that they did not meet the relevant criteria and did not qualify for whistleblower protection, so no further measures were applied. Moldova has informed the monitoring team that the People's Advocate is fulfilling its relevant responsibilities in practice and that information about this part of the institution's work is included in its annual reports.

Indicator 3.4. The whistleblower protection system is operational, and protection is routinely provided

Assessment of compliance

Benchmark 3.4.1.

	Compliance
Complaints of retaliation against whistleblowers are routinely investigated	✓

Compliant. The monitoring team received from Moldova three cases where the People's Advocate received and reviewed complaints regarding alleged retaliation against whistleblowers. In all three cases, it was established that the complaint did not meet the relevant criteria and the complainant did not qualify for protection.

Benchmark 3.4.2.

	Compliance
Administrative or judicial complaints are routinely filed on behalf of whistleblowers	x

Non-compliant. There were no such cases in 2022.

Benchmark 3.4.3.

The following protections are routinely provided to whistleblowers:

Element	Compliance
A. State legal aid	X
B. Protection of personal safety	X
C. Consultations	✓
D. Reinstatement	X
E. Compensation	X

A – non-compliant. There were no such cases in 2022.

B – non-compliant. There were no such cases in 2022.

C – compliant. Moldova provided the monitoring team with three cases where (potential) whistleblowers received consultation from the People's Advocate (Public Defender). In two of these cases, the individuals in question were advised that their cases did not qualify as whistleblower reports but were rather labour disputes.

D – non-compliant. There were no such cases in 2022.

E – non-compliant. There were no such cases in 2022.

Benchmark 3.4.4.

	Compliance
There are no cases where breaches of confidentiality of a whistleblower's identity were not investigated and sanctioned	✓

Compliant. There were no such cases in Moldova in 2022.

Box 3.1. Good practice – Digital Tools for Whistleblower Protection

„Because the whistleblower mechanism is a new mechanism and offers public and private sector employees the possibility to make disclosures of illegal practices, for this right to be understood, including which are the reporting channels, which are the responsible authorities of the examination of disclosures of illegal practices and which is the authority responsible for granting protection to whistleblowers that contributes to providing the guarantees provided by the Law regarding whistleblowers, the People's Advocate Office has developed and launched the application ***„Submit an online application for the protection of whistleblowers***", intended for people who want to request protection: http://ombudsman.md/avertizari-de-integritate/ , ensuring the confidentiality and safety of the information submitted. Also, the People's Advocate Office developed and launched an online training course on the topic of „Whistleblowers" integrated into the E-LEARNING application fhttp://ombudsman.md/courses/). Through the „Whistleblowers" course, the institution proposed the online study of the components and specifics of the whistleblowers institution, as well as familiarizing users with the competences of the People's Advocate Office in this field. The course provides information about whistleblower action conditions and protection offered to whistleblowers. By completing the online course, users have the opportunity to check their knowledge on the same platform. The course is developed in Romanian and Russian, (since the language of interethnic communication in the Republic of Moldova is Russian). Also, People's Advocate Office and the National Anti-corruption Centre organize trainings with groups of professionals in this field as a precondition for preventing the risks of corruption, including the whistleblowers mechanism."

On 22 June 2023, the Parliament adopted in its final reading the new Law on integrity whistleblowers, which transposes Directive (EU) 2019/1937 on the protection of persons who report violations of Union law. The law will enter into force at the expiration of the term of 3 months from the date of publication in the Official Gazette of the Republic of Moldova (on the 26th of October 2023).

4 Business integrity

The Corporate Governance Code adopted by the National Commission for Financial Markets (NCFM) establishes the responsibility of Moldova's companies' boards for the management of risks (including corruption risks). Compliance with the Code is mandatory for the country's listed companies. There is, however, no institution with a clear mandate to enforce this provision and no effective monitoring of compliance in practice.

Companies applying for registration in Moldova are required to disclose information about their beneficial owners. This information is made available to the general public via a dedicated website free of charge, but the system lacks some key functionalities that would provide an appropriate level of transparency and facilitate the processing of large amounts of data. No effective sanctions are in place for the failure to provide beneficial ownership information or provision of false information, and enforcement appears weak.

The government informed that as of 1 July 2023 with the amendment of the AML/CFT Law (Law no. 66/2023), the beneficial owner's name, surname, country of residence is not anymore publicly available on the website of the Public Services Agency. These changes to the law were done to implement the EU Court of Justice's Decision (C37/20). The impact thereof will be taken into account during the next monitoring round.

Moldova currently has no dedicated institution for the handling of complaints by companies concerning the violation of their rights, although there was an

initiative by the government in 2020 to set up such institution. After comments by the Venice Commission and the OSCE, the initiative was abandoned. As communicated by the People's Advocate, starting from August 2023, legal entities can also appeal to the People's Advocate (Ombudsman) for human rights violations.

Legislation does not require Moldova's SOEs to have independent members on their boards. There are no uniform rules regarding the selection of SOE board members and CEOs. This has affected the transparency of board and CEO appointments in SOEs in practice. However, on the positive side, CEOs in two of the country's five largest SOEs appear to have been selected through a transparent and merit-based procedure in 2022. Comprehensive compliance programs remain an exception in Moldova's largest SOEs, while publication of key information about the operation of these SOEs is patchy at best. As understood from the government, in May and June 2023 amendments have been adopted providing for the appointment of independent board members at SOEs (see benchmark 4.1). These changes will be assessed during the next monitoring round.

Figure 4.1. Performance level for Business Integrity is average.

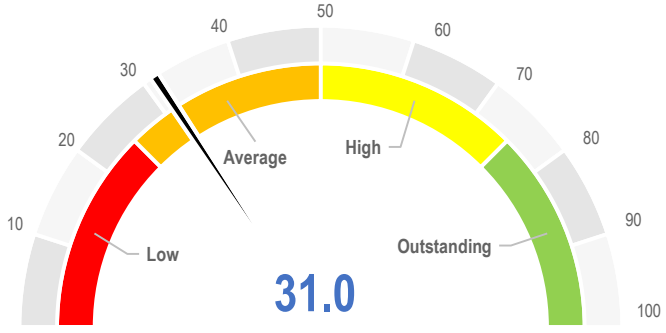
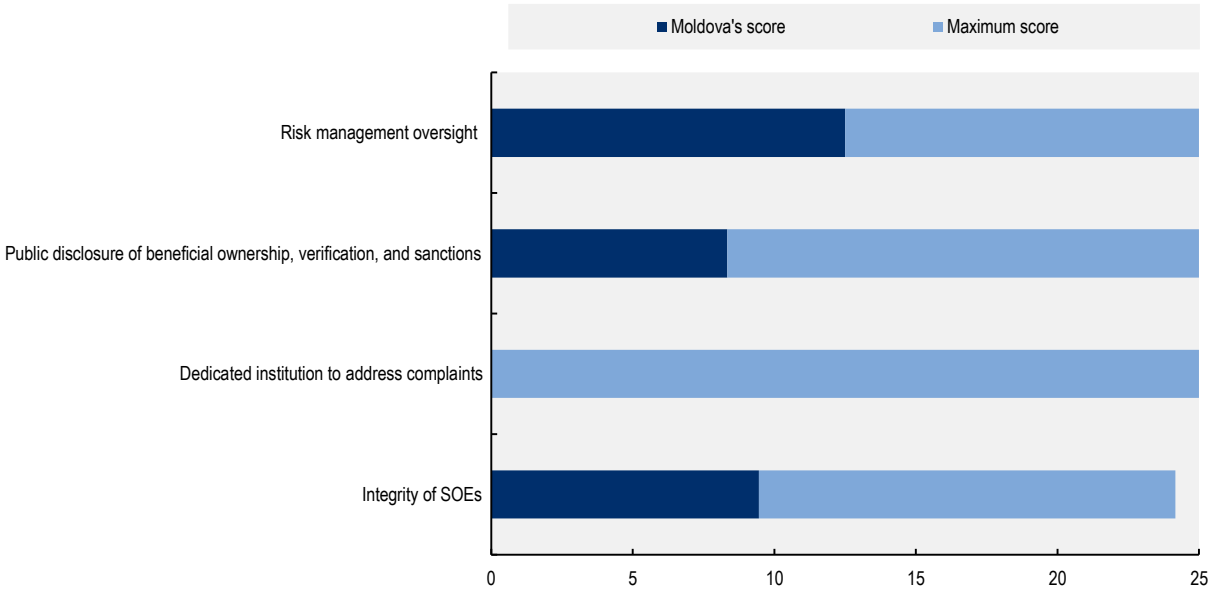


Figure 4.2. Performance level for Business Integrity by indicators.



Indicator 4.1. Boards of listed/publicly traded companies are responsible for oversight of risk management, including corruption risks

Background

Moldova has no general Corporate Governance Code ("CGC") but has a CGC adopted by the National Commission for Financial Markets (NCFM) which is mandatory for listed companies.

Assessment of compliance

Benchmark 4.1.1.

Corporate Governance Code (CGC) establishes the responsibility of boards of the companies listed in stock exchanges to oversee risk management:

Element	Compliance
A. CGC or other related documents establish the responsibility of boards to oversee risk management	✓
B. CGC or other related documents establish the responsibility of boards to oversee corruption risk management	✓
C. CGC or other related documents which establish responsibility to oversee risk management are mandatory for listed companies	✓

A – compliant. The CGC (Paragraph 121) states that a company board is responsible for the "general process of risk management, ensuring risk management in internal and external procedures and proper compliance with financial and legal procedures through the application of a stable internal mechanism."

B – compliant. The GCG (Paragraph 120) highlights "risks of corruption and fraud" as particularly significant types of risks, which a company's governing bodies are required to manage. Additionally, Chapter IV of the CGC establishes a number of responsibilities of company boards in terms of the prevention of corruption, such as endorsement of the principle of zero tolerance toward corruption and adoption of a Code of Conduct that will include relevant anti-corruption provisions.

C – compliant. Under the Decision of the National Commission of the Financial Market (the "NCFM") whereby the CGC was adopted (Decision No. HCNPF67/10/2015, the "NCFM Decision"), compliance with the CGC is mandatory for "public interest entities." Moldova's Law on Capital Market (Article 6) defines a "public interest entity" as "a bank, an insurance company, an optional pension fund" or "an issuer whose securities are admitted to trading, at the request or with the agreement of the issuer, on a regulated market." According to the government, some SOEs are listed and would be required to comply with the CGC in accordance with the NCFM Decision. The government stated that in 2022, there were 30 public interest companies, of these 15 were listed companies.

Benchmark 4.1.2.

Securities regulator or other relevant authorities monitor how listed companies comply with the CGC:

Element	Compliance
A. The legislation identifies an authority responsible for monitoring the compliance of listed companies with the CGC	X
B. The monitoring is conducted in practice	X

A – non-compliant. CGC does not identify an authority with a clear mandate to monitor compliance with the code. The government cited the NCFM as such authority with reference to the Law on NCFM (Articles 4, 8, 9) which establish its authority vis-à-vis market participants and its power to require them to report to it regularly. However, the aforementioned law does not clearly define NCFM's mandate to monitor compliance with the CGC. This has been confirmed by NCFM. However, NCFM stated that they have broad authority under the Law on NCFM (Articles 8 and 9) and they interpret that monitoring compliance with the CGC falls under the scope of this broad mandate. The National Bank of Moldova, the supervisory authority for banks, stated that pursuant to the Law on the Activity of Banks, a bank shall have a solid governance framework that includes a Corporate Governance Code, a clear organizational structure with well-defined, transparent and consistent lines of responsibility, effective procedures for identifying, managing, monitoring and reporting the risks to which the bank is or may be exposed, adequate internal control mechanisms, including rigorous administrative and accounting procedures, remuneration policies and practices that promote and are consistent with sound and effective risk management.

B – non-compliant. The government provided the monitoring team with a number of documents to demonstrate that the monitoring by NCFM is conducted in practice. However, it is not clear from their content that monitoring is conducted in practice pursuant to the benchmark.

The National Bank stated that as part of its annual review and evaluation process, it reviews arrangements, strategies, processes and mechanisms implemented by each bank to comply with the Law on the activity of banks and the normative acts issued by the National Bank of Moldova (Article 100 Law on the Activity of Banks). According to the National Bank, during its on-site inspections, it performs deep dive assessments of the risky areas identified during the review and evaluation process. The National Bank also reported having assessed the adequacy of internal control functions (which is part of corporate governance) at 10 banks over the last two years. However, no evidence has been provided to the monitoring team to confirm this.

Indicator 4.2. Disclosure and publication of beneficial ownership information of all companies registered in the country, as well as verification of this information and sanctioning of violations of the relevant rules, is ensured

Assessment of compliance

Benchmark 4.2.1.

There is the mandatory disclosure of information about beneficial owners of registered companies:

Element	Compliance
A. The country's legislation must include the definition of beneficial owner (ownership) of a legal entity which complies with the relevant international standard	✓
B. The law requires companies to provide a state authority with up-to-date information about their beneficial owners, including at least the name of the beneficial owner, the month and year of birth of the beneficial owner, the country of residence and the nationality of the beneficial owner, the nature and extent of the beneficial interest held	X
C. Beneficial ownership information is collected in practice	✓

A – compliant. In line with the relevant international standard, Article 3 of Moldova's AML Law defines a beneficial owner as "natural person ultimately controlling another natural person or who owns or ultimately controls a legal entity or the beneficiary of an investment company or the administrator of an investment company or the person on whose behalf a transaction is carried out or an activity and/or who owns directly or indirectly the ownership right or control over at least 25% of the shares or voting rights of the legal entity or of the assets under fiduciary administration."

B – non-compliant. Moldova's AML Law (Article 14(3)) prohibits registration of legal entities and individual entrepreneurs that fail to present to the registering authorities information about their beneficial owners. There is an obligation to have updated information on beneficial owners, but the law does not provide a time limit for providing such updated information to the relevant authorities. The government stated that this has been amended with the adoption of the amendments of the AML Law in 2023 to implement the 5th EU AML Directive, Law no. 66/2023. Given that the amendment was adopted in 2023, it falls outside of the scope of the current monitoring round. Under the Law on State Registration of Legal Entities and Individual Entrepreneurs (Article 33), companies are required to provide the state registry with information about their beneficial owners, including their first and last names, personal ID number, address and phone number. There is no requirement in the relevant provision to also provide information regarding the beneficial owner's month and year of birth, nationality, or the nature and the extent of the beneficial interest held. Conversely, model forms that are used to submit information about the beneficial owner(s) to the Public Services Agency do ask for this information.

C – compliant. Article 35 of the Law on State Registration of Legal Entities and Individual Entrepreneurs identifies the Public Services Agency as the body responsible for handling the registration and maintaining the state registry (which must contain information about beneficial owners of companies, as described in element B above). Additionally, the AML law (Article 14) establishes the responsibility of the Public Services Agency to collect beneficial ownership information. Models of Information about the beneficial owner(s) are placed on the official website of the Public Services Agency (a link to one example of a form:

https://www.asp.gov.md/sites/default/files/servicii/e-servicii/formulare-tip/2/alte/Formularul-BE-1.pdf). The information about the beneficial owner(s) is completed by the founder/associate, who meets the criteria specified in the notion of beneficial owner in accordance with the provisions of Law no. 308/2017 or, as the case may be, by his representative (authorized by a power of attorney authenticated as established by law), in accordance with operational procedures established by the state registration body in departmental normative acts. According to Moldova, the information is also collected in practice: 43,953 companies had provided it by the end of 2022 and 49,395 companies -- as of 30 June 2023.

Benchmark 4.2.2.

Public disclosure of beneficial ownership information is ensured in machine-readable (open data), searchable format and free of charge:

Element	Compliance
A. Beneficial ownership information is made available to the general public through a centralized online register	✓
B. Beneficial ownership information is published in a machine-readable (open data) and searchable format	x
C. Beneficial ownership information is available to the general public free of charge	✓

A – compliant. The Law on State Registration of Legal Entities and Individual Entrepreneurs (Article 341) requires the Public Services Agency to ensure public access to information from the State Registry through the dedicated website. Only information about beneficial owners' first and last names and country of residence is open to the general public (although more information is collected via the model forms of the Public Services Agency). According to Moldova, the information is available on the website of the Public Services Agency, at the following link: https://www.asp.gov.md/sites/default/files/informatii-utile/date-statistice/2023/rsud/company.xlsx. However, Moldova informed the monitoring team that as of 1 July 2023 with the amendment of the AML/CFT Law (Law no. 66/2023), the beneficial owner's name, surname, country of residence is not anymore publicly available on the website of the Public Services Agency. These changes to the law were done to implement the EU Court of Justice's Decision (C37/20). Since these amendments were adopted outside the timeframe of the current assessment, their impact will be evaluated during the next monitoring round.

B – non-compliant. In 2022, company information (including information on beneficial owners) was published as a single Microsoft Excel file. While it was possible to search for information within this single file, such an arrangement did not meet the criteria of the benchmark which requires a search functionality on the website and the possibility of indexing by search engines. As mentioned under benchmark A above, due to changes to AML/CFT law, specific information on beneficial owners will not be published anymore as of 1 July 2023. Since these amendments were adopted outside the timeframe of the current assessment, they will be evaluated during the next monitoring round.

C – compliant. The information described in the elements A and B above is available to the general public free of charge.

Benchmark 4.2.3.

	Compliance
Beneficial ownership information is verified routinely by public authorities.	X

Non-compliant. Article 14 of the AML law requires the Public Services Agency to verify the beneficial ownership information collected through the registration process. However, the government has acknowledged that this concerns a very basic type of verification, rather than an in-depth analysis of the disclosures which this benchmark refers to. There is currently no procedure for risk-based or random verification of the beneficial ownership information which companies present upon registration and the monitoring team did not receive any examples of verification conducted in practice. The government stated that with the adoption of the amended AML Law in 2023 (Law no. 66/2023) a second layer of checks has been introduced. This will be assessed for compliance during the next monitoring round.

Benchmark 4.2.4.

Sanctions are applied routinely, at least for the following violations of regulations on registration and disclosure of beneficial ownership:

Element	Compliance
A. Failure to submit for registration or update information on beneficial owners	X
B. Submission of false information about beneficial owners	X

A – non-compliant. According to Moldova, the primary sanction that is applied in the event of a company's failure to provide beneficial ownership information as required by the law is refusal of registration. Currently, there is no authority to impose sanctions, but under the new amendments of the AML Law (Law no. 66/2023) the government mentioned that the applicable authorities will be able to impose administrative fines (ranging from 1,000 – 1,500 conventional units).

B – non-compliant. See above under A. There have been no administrative sanctions or criminal convictions in 2022.

Indicator 4.3. There is a mechanism to address concerns of companies related to violation of their rights

Background

Moldova does not have a dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities as stipulated in Benchmark 3.1. Moldova has the People's Advocate, a separate ombudsfunction for human rights and children's right. In 2020, the government proposed a draft to amend the Law of the People's Advocate to create the "Ombudsman for the rights of entrepreneurs". The People's Advocate, OSCE and the Venice Commission criticised aspects of the draft. The initiative has been abandoned and it does not seem that there will be a business ombudsfunction set up in Moldova.

The People's Advocate mentioned during a meeting with the monitoring team that, starting from August 2023, legal persons will also be able to apply to the People's Advocate in relation to human rights violations. However, it is not clear yet how this will be set up and an appropriate mechanism needs to be put in place. The compliance of this new mechanism with Indicator 4.3 will be assessed in the next monitoring cycle.

Assessment of compliance

Benchmark 4.3.1.

There is a dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities, which:

Element	Compliance
A. Has the legal mandate to receive complaints from companies about violation of their rights by public authorities and to provide protection or help businesses to resolve their legitimate concerns	X
B. Has sufficient resources and powers to fulfil this mandate in practice	X
C. Analyses systemic problems and prepares policy recommendations to the government on improving the business climate and preventing corruption	X

A-C – non-compliant. Moldova does not have such institution.

Benchmark 4.3.2.

The institution mentioned in Benchmark 3.1 publishes online at least annually reports on its activities, which include the following information:

Element	Compliance
A. Number of complaints received, and the number of cases resolved in favour of the complainant	X
B. Number of policy recommendations issued, and the results of their consideration by the relevant authorities	X

A-B – non-compliant. Moldova does not have such institution and has not provided the monitoring team with any information regarding the publication of any relevant reports.

Indicator 4.4. State ensures the integrity of the governance structure and operations of state-owned enterprises (SOEs)

Background

Law nr. 1134/1997 on Joint Stock Companies (in case SOEs are joint stock companies, "Law on JSC"), Law nr. 246/2017 on State and Municipal Enterprises ("Law on SOE"), and Government Decree 484/2019

providing normative acts on the implementation of Law on SOE ("Decree 484") provide the primary legal framework governing SOEs in Moldova for 2022.

Moldova identified the following Joint Stock Companies ("JSC") and State Enterprises ("SE") as the country's five largest SOEs:

SOE 1: JSC Moldtelecom ("Moldtelecom")
SOE 2: JSC Franzeluta ("Franzeluta")
SOE 3: SE "Fabrica de Sticla" ("Chisinau Glass Factory").
SOE 4: SE "Poșta Moldovei" ("Moldova Post"); and
SOE 5: SE "Calea Ferată din Moldova" ("Moldova Railways").

Assessment of compliance

Benchmark 4.4.1.

Supervisory boards in the five largest SOEs:

Element	Compliance				
	Moldtelecom	**Franzeluta**	**Chisinau Glass Factory**	**Moldova Post**	**Moldova Railways**
A. Are established through a transparent procedure based on merit, which involves online publication of vacancies and is open to all eligible candidates	X	X	X	X	X
B. Include a minimum of one-third of independent members	X	X	X	X	X

In 2022, board members were appointed upon proposals from the Ministry of Finance, the Ministry of Economic Development and Digitalisation, the Ministry of Infrastructure and regional Development and the Public Property Agency ("the PPA") and the labour collective (in case of state enterprises) (respectively pursuant to Article 65 of Law on JSC and Articles 7 and 8 of the Law on SOEs).

Based on the information received by the monitoring team, in 2022, the legislation did not contain blanket provisions requiring SOEs to appoint their board members through a transparent procedure or to allocate any number of places on their boards for independent members. There were board appointments in 2022, but the information provided is insufficient to assess the procedure applied during the appointments (see table below).

As of May and June 2023, there have been developments that would be of interest for the next monitoring round: (i) amended Article 8 of the Law on SOEs stipulates that independent board members may be selected; and (ii) Government Decision 209/2023 provides rules on the selection of candidates for the position of board members at SOEs. Given that these were outside of the scope for the current monitoring round (focus on 2022), they have not been assessed.

SOE	Compliance	Explanation
Moldtelecom	**A. Non-compliant**	In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently

	B. Non-compliant	transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members.
Franzeluta	**A. Non-compliant** **B. Non-compliant**	In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members.
Chisinau Glass Factory	**A. Non-compliant** **B. Non-compliant pliant**	In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members.
Moldova Post	**A. Non-compliant** **B. Non-compliant pliant**	In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members.
Moldova Railways	**A. Non-compliant** **B. Non-compliant pliant**	In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members.

Benchmark 4.4.2.

CEOs in the five largest SOEs:

Element	Compliance				
	Moldtelecom	Franzeluta	Chisinau Glass Factory	Moldova Post	Moldova Railways
A. Are appointed through a transparent procedure which involves online publication of vacancies and is open to all eligible candidates	✓	✓	N/A	N/A	N/A
B. Are selected based on the assessment of their merits (experience, skills, integrity	✓	✓	N/A	N/A	N/A

Decree 484 sets out the applicable rules for the selection and appointment of CEOs for SOEs. In 2022, there were CEO appointments at Moldtelecom and Franzeluta.

The table below details the compliance by each of the five SOEs in relation to elements A and B:

SOE	Compliance	Explanation
Moldtelecom	**A. Compliant** **B. Compliant**	The announcement concerning the vacancy for the CEO's position was posted on the company's and the PPA's websites on 15 August 2022 and applications were accepted until 16 September 2022. The documents made available to the monitoring team indicate that the procedure was open to all eligible candidates and transparent. The competition rules published along with the vacancy include detailed selection criteria which meet element B of this benchmark.
Franzeluta	**A. Compliant** **B. Compliant**	The announcement concerning the vacancy for the CEO's position was posted on the company's and the PPA's websites on 9 September 2022 (including the rules of the competition) and applications were accepted until 26 September 2022. The documents made available to the monitoring team indicate that the procedure was open to all eligible candidates and transparent. The competition rules published along with the vacancy include detailed selection criteria which meet element B of this benchmark.
Chisinau Glass Factory	**Not applicable**	No CEO appointment took place in 2022
Moldova Post	**Not applicable**	No CEO appointment took place in 2022
Moldova Railways	**Not applicable**	No CEO appointment took place in 2022

Benchmark 4.4.3.

The five largest SOEs have established the following anti-corruption mechanisms:

Element	Compliance				
	Moldtelecom	Franzeluta	Chisinau Glass Factory	Moldova Post	Moldova Railways
A. A compliance programme that addresses SOE integrity and prevention of corruption	✓	X	X	✓	X
B. Risk-assessment covering corruption	X	X	X	✓	✓

The table below details the compliance by each of the five SOEs in relation to elements A and B:

SOE	Compliance	
	A. Compliance programme that addresses SOE integrity and prevention of corruption	**B. Risk-assessment covering corruption**
Moldtelecom	**Compliant.** The company has amongst others an extensive Corporate Governance Code (Cod-de-GC_S-AMoltelecom_redactratfinal.pdf (moldtelecom.md), Code of Ethics (which could not be translated) and the work instruction for the prevention, detection and reaction to acts of corruption and other illegalities (Code IL-09-01/02).	**Non-compliant.** no information was provided to the monitoring team.
Franzeluta	**Non-compliant.** The company does not have a compliance programme, but it has a Code of Ethics (its Corporate Governance Code) that covers integrity and anti-corruption topics (Cod de guvernare corporativa.pdf (franzeluta.info)) (see also benchmark 4.4).	**Non-compliant.** The company has not conducted risk assessment.
Chisinau Glass Factory	**Non-compliant.** The company does not have a compliance programme.	**Non-compliant**. The company has not conducted risk assessment.
Moldova Post	**Compliant**. The company has established an Integrity Plan which identifies possible risks and necessary measures to mitigate these and the relevant persons responsible. Furthermore, the company has a code of	**Complaint.** It seems that the company has conducted a risk assessment covering corruption, because it shared a copy of the Integrity Plan that the company has adopted which also covered corruption risk and actions points and responsible

	conduct and internal regulations with rules on conflict of interest, gifts and hospitality and ethical conduct. It also has among others procedures in place relating to purchases, internal controls on procurement, it provides training about integrity-related topics. It is understood that the company established a compliance department to promote a compliance culture, but this was not immediately apparent for the information provided	departments to deal with the action points within the set deadlines.
Moldova Railways	**Non-compliant**. The company does not have a compliance programme, but it has a Code of Conduct that covers integrity and anti-corruption topics and a separate regulation for gifts and hospitality.	**Compliant**. It seems that the company conducted a risk assessment covering corruption in 2022, because it shared a copy of the Integrity Plan (for 2023 and beyond) that the company has adopted which also covered corruption risk and actions points and responsible departments to deal with the action points within the set deadlines.

Benchmark 4.4.4.

In the five largest SOEs, the anti-corruption compliance programme includes the following:

Element	Compliance				
	Moldtelecom	Franzeluta	Chisinau Glass Factory	Moldova Post	Moldova Railways
A. Rules on gifts and hospitality	✓	✓	X	✓	✓
B. Rules on prevention and management of conflict of interest	✓	✓	X	✓	✓
C. Charity donations, sponsorship, political contributions	X	X	X	X	X
D. Due diligence of business partners	X	X	X	X	X
E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	X	X	X	X	X

The table below details the compliance by each of the five SOEs in relation to each elements of this benchmark:

SOE	Element	Compliance/Explanation
Moldtelecom	A. Rules on gifts and hospitality	**Compliant**. The Code of Ethics has rules on gifts and hospitality (pages 8-10).
	B. Rules on prevention and management of conflict of interest	**Compliant**. The corporate governance code (Chapter VI), the regulations regarding the procurement of goods, works, services by the Company (art 5) as well as the Code of Ethics (pages 6-8) have rules on conflict of interest.
	C. Charity donations, sponsorship, political contributions	**Non-compliant**. In the corporate governance code it is stated that sponsorships are carried out in full transparency pursuant to Law no. 1420/2002 regarding philanthropy and sponsorship, as well as point 1 and point 6 of Government Decree 110/2011, and that, in relation to political donations, staff are aware of the provisions of Law no. 294/2007 on political parties, as well as other related legal regulations. However, the legislative acts cited in the code do not contain provisions designed to address the specific risks that SOEs could face as far as sponsorship, political contributions and

		donations are concerned, so a reference to them cannot be considered sufficient for compliance.
	D. Due diligence of business partners	**Non-compliant.** The government stated that each participant in a tender is obligated to provide information that allows for a check of the participant's liquidity, experience and beneficial ownership, but this is not anti-corruption due diligence. Moreover, the company does not seem to have procedures and processes in place for the selection of all its business partners and third parties, including authorised agents.
	E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	**Non-compliant**. There is no explicit wording as to who within the company has the responsibility for oversight and implementation of the anti-corruption compliance programme. The corporate governance code states that "the company will manage the most important risks inherent in its specific activity, as well as define the basic principles of risk management, especially those of *fraud and corruption*, according to established procedures." It seems that it is the responsibility of the Board, which is "responsible for the total risk management process, (…) through a stable internal mechanism (Art. 9.16). It is also stated that the audit committee monitors "efficiency of the internal control, internal audit and risk management system within the company" (Art. 9.7). Reference has been made to the duties in Regulations of 12 November 2019, but these have not been provided and could therefore not been assessed by the monitoring team. The government has stated that with the implementation of the new Law on the integrity of whistleblowers (No 165/2023), the responsibilities within the company for the supervision and implementation of the anti-corruption programme will be established. This will be assessed in the next monitoring round.
Franzeluta	A. Rules on gifts and hospitality	**Compliant.** The company's CGC contains rules on gifts and hospitality (rule 6).
	B. Rules on prevention and management of conflict of interest	**Compliant.** The company's CGC contains rules on conflict of interest (rule 7 and 8).
	C. Charity donations, sponsorship, political contributions	**Non-compliant**. The code does not contain specific rules on this topic. Instead, it establishes the general principle of integrity (rule 3(d)) and the prohibition of bribery / corruption (rule 4).
	D. Due diligence of business partners	**Non-compliant.** The CGC states that the company's staff should promote the rules set out in the code to the business partners (rule 5). However, the code does not contain any procedure/ processes on due diligence in relation to business partners.

	E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	**Non-compliant**. The code states that an official responsible for ethics will be appointed. However, nothing is stated in relation to the oversight and implementation of the anti-corruption compliance programme.
Chisinau Glass Factory	A. Rules on gifts and hospitality	**Non-compliant** (elements A-E) The company does not have a compliance programme.
	B. Rules on prevention and management of conflict of interest	
	C. Charity donations, sponsorship, political contributions	
	D. Due diligence of business partners	
	E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	
Moldova Post	A. Rules on gifts and hospitality	**Compliant**. The regulation on gifts stipulates that employees shall not “carry out commercial activities, which could directly or indirectly cause damage to the economic interests of the Company, which could lead to the employee obtaining undue benefits (…) (Article 15(vv)). Moreover, the Code of Conduct contains rules on gifts and hospitality (art. 3.4). It was also mentioned that the company established a register to record gifts (according to Annex no. 3 to Government Decision no. 116 of 26.02.2020 regarding the legal regime of gifts).
	B. Rules on prevention and management of conflict of interest	**Compliant**. The Code of Conduct contains rules on conflict of interest (art. 4). Furthermore, it was also mentioned that the company established a register to record declarations regarding conflicts of interest (in accordance with Annex no. 4 to Law no. 133 of 17.06.2016 "Regarding the declaration of wealth and personal interests").

	C. Charity donations, sponsorship, political contributions	**Non-compliant**. The company does not seem to have any relevant rules.
	D. Due diligence of business partners	**Non-compliant**. The company does not seem to have any relevant rules.
	E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	**Non-compliant**. Based on the information provided, it is not clear who has the responsibility for oversight and implementation of anti-corruption compliance programme. It is understood that a compliance department was established, but this could not be verified on the basis of the provided information.
Moldova Railways	A. Rules on gifts and hospitality	**Compliant**. The Company has a separate regulation on gifts and hospitality.
	B. Rules on prevention and management of conflict of interest	**Complaint**. The Code of Conduct contains rules on conflict of interest (Art. 4.6).
	C. Charity donations, sponsorship, political contributions	**Non-compliant**. The company does not seem to have any relevant rules.
	D. Due diligence of business partners	**Non-compliant**. The company does not seem to have any relevant rules.
	E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	**Non-compliant**. Based on the information provided, the company does not seem to have rules on the responsibility for oversight and implementation of anti-corruption compliance programme.

Benchmark 4.4.5.

The five largest SOEs disclose via their websites:

Element	Compliance				
	Moldtelecom	**Franzeluta**	**Chisinau Glass Factory**	**Moldova Post**	**Moldova Railways**
A. Financial and operating results	✓	✓	✓	✓	✓
B. Material transactions with other entities	X	X	X	X	X
C. Amount of paid remuneration of individual board members and key executives	X	X	X	X	X
D. Information on the implementation of the anti-corruption compliance programme	X	X	X	✓	X
E. Channels for whistleblowing and reporting anti-corruption violations	✓	X	X	X	✓

	Compliance	
SOE	Element	Explanation
Moldtelecom	A. Financial and operating results	**Compliant**. The Annual report 2022 is published on the website: https://moldtelecom.md/files/Situatii%20financiare%20a.2022.pdf.
	B. Material transactions with other entities	**Non-compliant**. The information is not disclosed.
	C. Amount of paid remuneration of individual board members and key executives	**Non-compliant**. The Annual report 2022 contains the total amount for salaries for members of administrative bodies, censors and the board of directors, not the paid remuneration of individual board members (page 36).
	D. Information on the implementation of the anti-corruption compliance programme	**Non-Compliant**. Currently there is no anti-corruption compliance programme, but it is understood that one is being developed.
	E. Channels for whistleblowing and reporting anti-corruption violations	**Compliant**. The channels are listed in the work instruction for the prevention, detection and reaction to acts of corruption and other illegalities (Code IL-09-01/02), which is published on the website.
Franzeluta	A. Financial and operating results	**Compliant**. The information is available on the website: https://franzeluta.info/despre-noi/rapoartee.html. Not all results for 2022 are available yet.

	B. Material transactions with other entities	**Non-compliant**. A link was provided to the monitoring team where information is supposedly available (https://franzeluta.info/despre-noi/rapoartee.html.). However, link refers to a website with multiple reports in Romanian (which could not be translated) and it has not been specified which report would contain relevant information. The monitoring team could not verify compliance with this benchmark..
	C. Amount of paid remuneration of individual board members and key executives	**Non-compliant**. The information is supposedly available on the website of the National Integrity Authority (Home | National Integrity Authority (ani.md)), but no specific link to the information was provided nor was the information readily available on the English version of the website. The information does not seem to be available on the company's website.
	D. Information on the implementation of the anti-corruption compliance programme	**Non-compliant**. The information does not seem to be disclosed on the website.
	E. Channels for whistleblowing and reporting anti-corruption violations	**Non-compliant**. Reference is made to the general Romanian website (https://franzeluta.info/despre-noi/rapoartee.html) without further information on where the information can be found. The monitoring team could not find it to verify.
Chisinau Glass Factory	A. Financial and operating results	**Compliant**. The financial statements for 2022 are published on the website: https://glass.md/category/postari/rapoarte/.
	B. Material transactions with other entities	**Non-compliant**. The financial statements for 2022 only specify the number of procurement contracts concluded in 2022. Form the information it is not clear which transactions are material and with which entities these were concluded. The monitoring team could thus not verify compliance with this benchmark.
	C. Amount of paid remuneration of individual board members and key executives	**Non-compliant** The Management Report and Financial Statements for 2022 contain only the total amount for salaries for the board of directors, not the paid remuneration of individual board members.
	D. Information on the implementation of the anti-corruption compliance programme	**Non-compliant**. The information does not seem to be disclosed on the website.
	E. Channels for whistleblowing and reporting anti-	**Non-compliant**. The information does not seem to be disclosed on the website.

	corruption violations	
Moldova Post	A. Financial and operating results	**Compliant**. The financial and operating results were provided for 2022 (https://static-api.posta.md/api/v1/storage/09/08/2023/Situatii_Financiare_anul_2022.pdf).
	B. Material transactions with other entities	**Non-compliant**. The information does not seem to be disclosed on the website.
	C. Amount of paid remuneration of individual board members and key executives	**Non-compliant**. A link was provided to the monitoring team where information is supposedly available: IFRS_situatii_financiare_individuale_2021.pdf (posta.md). However, the information is not readily available in English (nor translatable given the format), so could not be verified by the monitoring team.
	D. Information on the implementation of the anti-corruption compliance programme	**Compliant**. The management report for 2022 provides an update on the integrity plan and any action points that are being implemented.
	E. Channels for whistleblowing and reporting anti-corruption violations	**Non-compliant**. A link was provided to a page on the website (Posta Moldovei - Reclamații și petiții), where complaints and petitions can be submitted seemingly in relation to quality of the services by the company and any issues with the post sent within Moldova and abroad. It is not advertised as a channel for whistleblowing complaints. Although there seems to be no issues from a technical aspect for whistle blowers to report issues, it is unlikely that they would feel safe and comfortable to make a sensitive reports via this channel, which does not guarantee confidentiality
Moldova Railways	A. Financial and operating results	**Compliant**. The financial statements for 2022 are published on the website: Calea Ferata din Moldova (railway.md).
	B. Material transactions with other entities	**Non-compliant**. A link is provided to the website where information is supposedly available: Calea Ferata din Moldova (railway.md). However, the information is not readily available in English, so could not be verified by the monitoring team.
	C. Amount of paid remuneration of individual board members and key executives	**Non-compliant**. The information does not seem to be disclosed on the website.

	D. Information on the implementation of the anti-corruption compliance programme	**Non-compliant**. The relevant information has not been published. It is worth noting, however, the Integrity Plan (for 2023 and beyond) is available on the website (http://www.railway.md/?l=ro&h=BG0l8rJIUvC473DzC/fGAYEgcEsPsKBC)
	E. Channels for whistleblowing and reporting anti-corruption violations	**Compliant**. The information on the company's hotline is published on its website : http://www.railway.md/?l=ro&h=BG0l8rJIUvC473DzC/fGAYEgcEsPsKBC.

5 Integrity in public procurement

The public procurement system in Moldova is the main mechanism for ensuring transparency, competition, and value for money in the acquisition of goods, services, and works by public entities. The public procurement system operates under the legal framework governed by the Law on Public Procurement and associated regulations. These laws aim to harmonize Moldova's procurement practices with international standards and principles, promoting fairness, efficiency, and integrity.

The Ministry of Finance is the primary governmental body in charge of public procurement policies and regulations, as well as the strategy for their development. The dedicated Service for Public Procurement Policies within the Ministry is responsible for development of legislative acts and regulatory framework on public procurement. The Ministry has created and maintains a nationwide e-procurement platform MTender, which provides electronic public procurement records. However, the system does not currently cover all procurement methods available under the law, while centralised publication of up-to-date procurement data remains a challenge and most information is not currently published in a machine-readable format.

The Public Procurement Agency (PPA), a specialised body subordinated to the Ministry is in charge of implementing the public procurement policy, whilst the State Treasury, also subordinated to the Ministry, is in charge of registering public contracts and making corresponding payments. The independent National Agency for the Resolution of Complaints is reviewing

and taking decisions on complaints from participants in procurement processes and other parties concerned.

Moldova has implemented various measures to combat corruption in public procurement. However, there are gaps in terms of sanctions for violation of COI rules, both in law and in practice, while the provisions on mandatory debarment from public procurement of natural and legal persons convicted for corruption are not enforced effectively in practice.

Figure 5.1. Performance level for Integrity in Public Procurement is average.

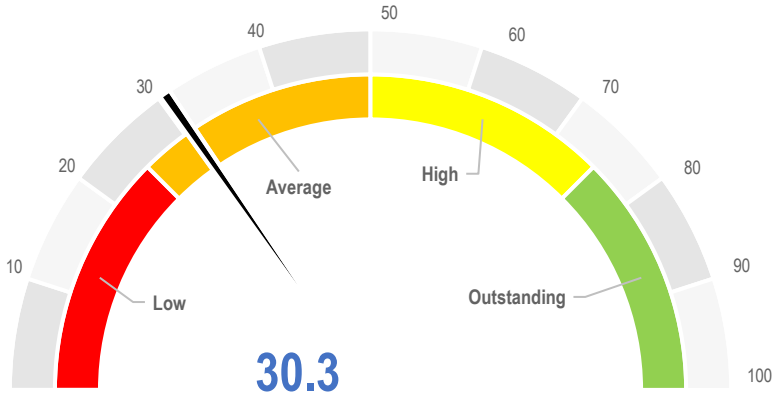
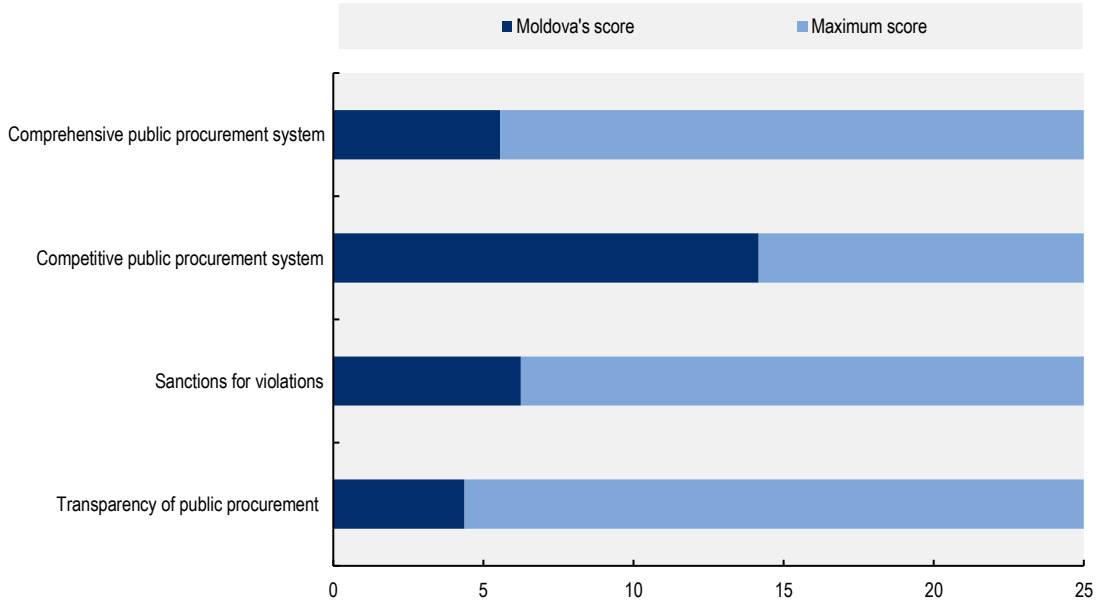


Figure 5.2. Performance level for Integrity in Public Procurement by indicators.



Indicator 5.1. The public procurement system is comprehensive

Background

The core public procurement framework of Moldova is largely harmonised with EU Procurement Directives of 2014. The Public Procurement Law of Moldova (PPL), adopted in 2015, establishes a comprehensive legal framework for the procurement of works, goods, and services, including consulting services. PPL is aligned with the Agreement on Government Procurement of the World Trade Organization (WTO GPA), which Moldova is a party to. Since acceding to the GPA, Moldova has continued to refine procurement legislation. In addition to PPL in 2020 Moldova adopted a law regulating procurement by utilities (LPU).

The public procurement system in Moldova allows for various procurement methods, application of which depends on the nature and complexity of the procurement, ensuring appropriate competition and efficiency.

Assessment of compliance

Benchmark 5.1.1.

Public procurement legislation covers the acquisition of works, goods and services concerning public interests by:

Element	Compliance
A. Publicly owned enterprises, including SOEs and municipality owned enterprises	X
B. Utilities and natural monopolies	✓
C. Non-classified area of the national security and defence sector	✓

A – non-compliant. Although the utility sector (oil and gas, heat supply, energy, water supply and wastewater, transport and postal services) companies are regulated by LPU, procurement by state- and municipality-owned enterprises is not subject to PPL or LPU. It is partially covered by the regulation on procurement by SOEs adopted by the Government in 2020, which does not seem to apply in respect of procurement by municipal enterprises.

PPL Article 5 provides a list of exclusion grounds, which appear to be reasonable, except for telecommunication contracts.

LPU has a large list of exceptions covered by Articles 16 to 26, with the most questionable provisions in respect of affiliates (LPU Article 24), which may provide for transfer pricing and lead to unjustified tariff increases, creating corruption grounds.

B – compliant. Procurement of works, goods and services by utilities and natural monopolies is covered by LPU. It was noted that the application of LPU is not controlled by PPA. According to CSOs, LPU is not always applied in practice, and when applied, its application is uneven due to the lack of respective secondary legislation.

C – compliant. PPL Article 6 requires application of the law in the national security and defence sectors, with some exceptions, listed in PPL Article 5. LPU Article 26 provides more restrictions in respect of procurement in national security and defence sector, but these restrictions seem to be limited to classified areas of such procurement.

Benchmark 5.1.2.

	Compliance
The legislation clearly defines specific, limited exemptions from the competitive procurement procedures	X

Non-compliant. PPL Article 46 states that open and restricted tenders are the default procedures of public procurement and that other procedures can only be used in the cases established by the law. LPU does not set competitive procedures as default.

In respect of both PPL and LPU, the only exception from competitive processes is negotiated procedure without prior publication of an invitation (PPL Article 56 and LPU Article 40), which may be applied in limited cases. However, not all conditions in the PPL under which this procedure can be used are in line with the relevant international standards (such as the UNCITRAL Model Law on Public Procurement), while three out of five grounds listed in LPU Article 40 (Paragraph 3) also appear unreasonable.

Benchmark 5.1.3.

	Compliance
Public procurement procedures are open to foreign legal or natural persons	X

Non-compliant. According to PPL Article 16 and LPU Article 29, public procurement in Moldova is open to foreign legal and natural persons, albeit on reciprocity principle. Moldova is a signee to the WTO GPA, therefore, by virtue of these agreements, public procurement is broadly open to a large group of countries.

At the same time participation in public procurement via e-procurement system MTender requires e-signature, as per PPL Article 33, sub-paragraph 14. Similar requirement is also stated in Law 124/2022 on electronic signature and electronic documents, according to which electronic signatures issued by authorities of other states are not recognized, unless the is bilateral or multilateral agreement with other states. At the time of assessment, it appears that Moldova only recognised e-signatures of EU countries.

According to the authorities, only 41 contracts (0.23%) out of 18,096 in total, were awarded to foreign economic operators in 2022. The relatively low level of foreign companies' participation could be explained by the geographical location of the country, its proximity to Ukraine that in 2022 was the target of Russia's war of aggression, use of the official national language and e-signature constraints mentioned above, rather than legal restrictions of the procurement system.

Indicator 5.2. The public procurement system is competitive

Assessment of compliance

Benchmark 5.2.1.

Direct (single-source) contracting represents:

Element	Compliance
A. Less than 10% of the total procurement value of all public sector contracts (100%)	B (70%)
B. Less than 20% of the total procurement value of all public sector contracts (70%)	
C. Less than 30% of the total procurement value of all public sector contracts (50%)	

Compliance rating: 70%

Contracts awarded directly represented 12% of the total procurement value in 2022. 1,040 contracts worth a total of MDL 1,647,036,015 were signed without a competitive process in Moldova in 2022. It represented 6% of the total number of contracts (18,096) and 12% of their cumulative value of MDL 13,682,388 036.

It should be noted that the statistical data above only include contracts signed under PPL. No comprehensive statistics are available for the contracts signed under the LPU.

According to CSOs, a relatively large share of single-source procurement is a result of inefficient planning by procuring entities and their abuse of the legislative provision allowing the use of such a method in case of unforeseen circumstances or for urgent needs, albeit PPL Article 56 does not allow the use of such method due to mishandlings by the procuring entities. The authorities emphasised that an increase in direct contracting in 2022 (as compared to the level of 2021, when it was as little as 5.63% of the total value of public procurement), was due to the refugee influx, resulting from the war in Ukraine.

Benchmark 5.2.2.

The average number of proposals per call for tender is:

Element	Compliance
A. More than 3 (100%)	A (100%)
B. More than 2.5 (70%)	
C. More than 2 (50%)	
D. More than 1.5 (30%)	
E. Less than 1.5 (0%)	

Compliance rating: 100%

Based on the statistical data for 2022, the average number of proposals per an open tender was 3.8 and per a request for quotation – 3. The statistical data were provided only in respect of contracts signed under PPL. No data are available for contracts signed under LPU.

Benchmark 5.2.3.

The threshold value for goods contracts:

Element	Compliance
A. Less than EUR 2,500 equivalent (100%)	D (0%)
B. Less than EUR 5,000 equivalent (50%)	
C. Less than EUR 10,000 (30%)	
D. More than 10,000 (0%)	

Non-compliant (0%)

PPL Article 2 establishes the thresholds (procurement base unit) for small value acquisition of goods, works, and services, with the threshold for goods contracts in the amount of MDL 200,000 (about EUR 9,870, as per the exchange rate of 31 December 2022 but more than EUR 10,000 for large part of 2022).

LPU Article 1 establishes the thresholds (procurement base unit) for small value acquisition of goods, works, and services, with the threshold for goods contracts in the amount of MDL 800,000 (about EUR 39,480, as per the exchange rate of 31 December 2022).

Indicator 5.3. Dissuasive and proportionate sanctions are set by legislation and enforced for procurement-related violations

Assessment of compliance

Benchmark 5.3.1.

Conflict of interest in public procurement is covered by legislation and applied in practice:

Element	Compliance
A. There are explicit conflict of interest regulations established by law covering all public employees involved in the procurement cycle (from planning to contract completion stage)	X
B. Sanctions are routinely imposed on public employees for violations of conflict of interest rules in public procurement	X
C. There are explicit conflict of interest regulations established by law covering all private sector actors involved in procurement	X

A – non-compliant. PPL Article 79 establishes comprehensive rules in respect of conflict of interest for the employees of the procuring entity and third parties involved in planning, preparing and conducting procurement procedure. On the other hand, LPU Article 34 has very basic provisions in respect of conflict of interest, while there are no provisions regulating conflict of interest in procurement by SOEs.

B – non-compliant. There are no targeted legal provisions establishing sanctions for violation of conflict of interest rules in public procurement neither in PPL nor in LPU, except for exclusion of a conflicted participant from the procurement procedure, or a conflicted evaluator from the evaluation process (PPL

Article 79, paragraph 3 in conjunction with PPL Article 19, paragraph (h); and PPL Article 79, paragraph 4 respectively). No evidence was presented that sanctions have been routinely applied either for the violation of procurement-specific COI provisions or Moldova's general COI provisions in the context of public procurement. According to CSOs, there is no effective monitoring of compliance with this provision in practice and many violations remain unnoticed.

C – non-compliant. PPL Article 79 provides reasonable provisions covering conflict of interests by private sector actors. Physical or legal persons that supported a procuring entity with the preparation of a procurement process can participate in it only insofar as their involvement does not distort competition. A procuring entity is required to deliver to other participants all information that such persons had access to in the process of preparing procurement process and shall disqualify the latter from the process if equal treatment of all participants cannot be ensured and if the persons fail to demonstrate that their involvement in the preparatory work does not distort competition. These provisions are further supported by PPL Article 19, which requires procuring entities to exclude from the procurement procedure any conflicted participant.

On the other hand, LPU does not have any provisions on conflict of interest of private sector actors. Moreover, LPU Article 24 provides for unregulated procurement from affiliates of a procuring entity.

Benchmark 5.3.2.

Element	Compliance
Sanctions are routinely imposed for corruption offences in public procurement	X

Non-compliant. According to the authorities, in 2022 there were 18 convictions made in respect of corruption-related crimes in public procurement. However, no specific cases were presented to the monitoring team to verify the compliance with the benchmark.

Benchmark 5.3.3.

The law requires to debar from the award of public sector contracts:

Element	Compliance
A. All natural persons convicted for corruption offences	✓
B. All legal persons and affiliates of legal persons sanctioned for corruption offences	✓

A – compliant. PPL Article 19 and LPU Article 67 establish mandatory debarment from the procurement procedures of any person convicted for corruption during the preceding five years. The debarment provisions of both laws also apply to the situations where the participant is affiliated with a person convicted for corruption, and such a person manages, represents, or controls the participant. In addition to the above, PPL requests rejection of an offer or annulment of a contract award (PPL Articles 69 and 71 respectively) in case when corruption activities were detected in the course of the procurement respective process.

B – compliant. The Criminal Code of Moldova has corporate criminal liability and in case of corruption related offences a legal entity, with the exception of public authorities, is criminally liable and may be fined, deprived of the right to exercise a certain activity or even liquidated.

As mentioned above both PPL and LPU establish mandatory debarment from the procurement procedures any person convicted for corruption during the preceding five years. Based on the laws' definitions, a

participant in a procurement process may be a physical or a legal person. The debarment provisions of both laws also apply to the situations where the participant is affiliated with a person convicted for corruption, and such person manages, represents or control the participant.

Benchmark 5.3.4.

Debarment of all legal and natural persons convicted for corruption offences from the award of public sector contracts is enforced in practice:

Element	Compliance
A. At least one natural person convicted for corruption offences was debarred	X
B. At least one legal person or an affiliate of a legal person sanctioned for corruption offences was debarred	X

A – non-compliant. No information was provided in respect of the benchmark.

B – non-compliant. No information was provided in respect of the benchmark.

Indicator 5.4. Public procurement is transparent

Background

The Ministry of Finance of the Republic of Moldova working towards digitalising public procurement to ensure more transparent and efficient spending of the state budget of the Republic of Moldova. In 2018, a new digital government service – MTender – was launched (mtender.gov.md). It is intended that MTender will support public procurement from planning phase to completion of public contracts. However, not all intended functionalities are currently operational. MTender is a multi-platform networking system, which comprises a government-operated web portal and the Open Data central database unit. It is currently connected with four commercial electronic platforms supporting electronic tendering procedures for public sector and commercial clients.

Assessment of compliance

Benchmark 5.4.1.

An electronic procurement system, including all procurement methods:

Element	Compliance
A. Is stipulated in public procurement legislation	X
B. Is accessible for all interested parties in practice	X

A – non-compliant. PPL provides for the use of the electronic procurement system but does not mandate its use for all procurement methods. MTender e-procurement platform currently covers the following procurement methods: open tenders, negotiated procedure without prior notification, requests for quotations and framework agreements. Other procurement methods provided for by PPL and LPU are currently not covered by the e-procurement system. According to Government Order 870 issued in

December 2022 all contracting authorities/entities shall, subject to number of exceptions, use MTender for procurement of low value (under specified thresholds) contracts.

B – non-compliant. There are no legal barriers to the use of the e-procurement system and it should be accessible for all interested parties (PPL Article 16). However, there is an administrative barrier for accessibility of Moldovan procurement system. Participation in public procurement via e-procurement system MTender requires e-signature, while Law 124/2022 on electronic signature and electronic documents, suggests that electronic signatures issued by authorities of other states are not recognized, unless the is bilateral or multilateral agreement with other states. At the time of assessment, it appears that Moldova only recognises e-signatures of EU countries.

Benchmark 5.4.2.

The following procurement stages are encompassed by an electronic procurement system in practice:

Element	Compliance
A. Procurement plans	X
B. Procurement process up to contract award, including direct contracting	✓
C. Lodging an appeal and receiving decisions	✓
D. Contract administration, including contracts modification	X

Below is the information on Moldova's compliance with each element:

A – non-compliant. Although procurement plans were not published centrally in the e-procurement system MTender. They were posted on the websites of individual procuring entities.

B – compliant. For the procurement methods covered by e-procurement platform, all the stages up to contract award are encompassed by the electronic system.

C – compliant. Appeals and decisions in respect of procurement processes were published on the website of the National Appeals Resolution Agency of Moldova (ansc.md). Moreover, a notice appeared in the e-procurement system when an appeal is lodged with the Agency.

D – non-compliant. The e-procurement system did not cover contract administration, including contracts modification.

Benchmark 5.4.3.

The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable):

Element	Compliance
A. Procurement plans	X
B. Complete procurement documents	X
C. The results of the evaluation, contract award decision, and final contract price	X
D. Appeals and results of their review	✓
E. Information on contract implementation	X

Below is the information with Moldova's compliance with each element. Where the information in question is published online, it is available free of charge:

A – non-compliant. Procurement plans were not published centrally in the e-procurement system.

B – non-compliant. All tender notices, as per the requirement of PPL Article 29, were published in the Public Procurement Bulletin and on the website of the Public Procurement Agency. For the procurement processes covered by MTender, it allowed for the procurement documentation to be attached to the notice and to be accessible for free download. Other information was also available on MTender and on the PPA website. However, not all the procurement processes mentioned in PPL and LPU are currently covered by MTender.

C – non-compliant. For the procurement processes covered by MTender, evaluation reports prepared by the contracting authorities and sent to the PPA in line with PPL Article 69 were not published. However, PPA used the key data from award notices and published them in the system in a dedicated section (Awarded Contracts). The information included the contract price at award. Not all the procurement methods mentioned in PPL and LPU were covered by MTender.

D – compliant. Appeals and the results of their review are published on the website of the National Appeals Resolution Agency, from which they can be downloaded.

E – non-compliant. Information on contract implementation was not published centrally.

Benchmark 5.4.4.

The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable), in the machine-readable format:

Element	Compliance
A. Procurement plans	X
B. Complete procurement documents	X
C. The results of evaluation, contract award decision and final contract price	X
D. Appeals and results of their review	X
E. Information on contract implementation	X

A – non-compliant. The information was not available in a machine-readable format.

B – non-compliant. The information is not available in a machine-readable format.

C – non-compliant. Most of the relevant information in available in a machine-readable format but evaluation results are only available as PDF files.

D – non-compliant. The information is not available in a machine-readable format.

E – non-compliant. The information is not available in a machine-readable format.

Box 5.1. Good practice – Improvements in Legislation and E-Procurement

Moldova created a procurement system largely aligned with fundamental international standards modelled upon EU Procurement Directives. Moldova is a signee to WTO GPA.

Since 2018 Moldova has been using and permanently modernizing its e-procurement platform, which ensures a high level of completion under open tender procedure, which in turn covers 75 per cent of the cumulative value of contracts, processed via e-procurement system, that represents 5 per cent of the GDP of the country.

Assessment of non-governmental stakeholders

During the onsite visit, CSOs expressed a number of concerns regarding corruption-related risks in the public procurement system. Main of them are focused on (a) incomplete coverage of procurement methods in MTender, (b) limited regulations and lack of efficient control over procurement by utilities, governed by LPU, or SOEs, and especially municipally owned enterprises, (c) defective planning with frequent late publications and frequent modifications, (d) use of targeted specification and requirements to be met by only one specific participant, under umbrella of competitive processes, (e) use of incomplete requirements and ambiguous evaluation criteria, (f) use of very short time for preparation of proposals, (g) disregard of qualification of participants, (h) lack of transparency and insufficient control over contract implementation with frequent contract price increases, (i) lack of timely of publication of debarment information. Many of the allegations and concerns seem to be supported by provided official statistics and reference cases.

6 Independence of judiciary

Moldova has launched significant judicial reforms since the change of government in 2021 with many changes being too recent to evaluate their practical application. To ensure integrity of judiciary, a Pre-Vetting Commission has been set up in 2022 to conduct integrity checks of the candidates for the judicial governance body – the Superior Council of Magistracy. The work of the Commission has not been completed by the end of 2022, resulting in Council and most of its subsidiary bodies having limited functionalities. The amended legal basis which regulates the set up and functioning of the Council and its subsidiary bodies is mostly in line with international standards. However, this remains on paper until the appointment of the new members and relaunch of the Council's and its subsidiary bodies' full scope of work. Judges in Moldova are now appointed for life through an open competition; the Superior Council of Magistracy proposes candidates for appointment to the President who may reject them on clear grounds and providing an explanation. Disciplining of judges is well regulated, however, some grounds for disciplinary liability are still ambiguous, leaving room for discretionary interpretation. Other challenges persist, including that the judiciary is understaffed, the judges are underpaid, creating a high risk for corruption and a growing backlog of cases.

Figure 6.1. Performance level for Independence of Judiciary is outstanding.

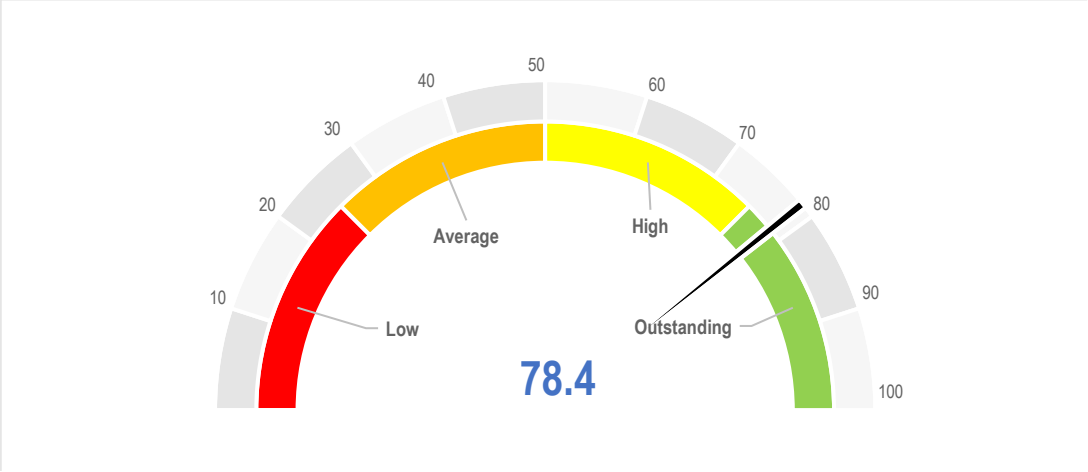
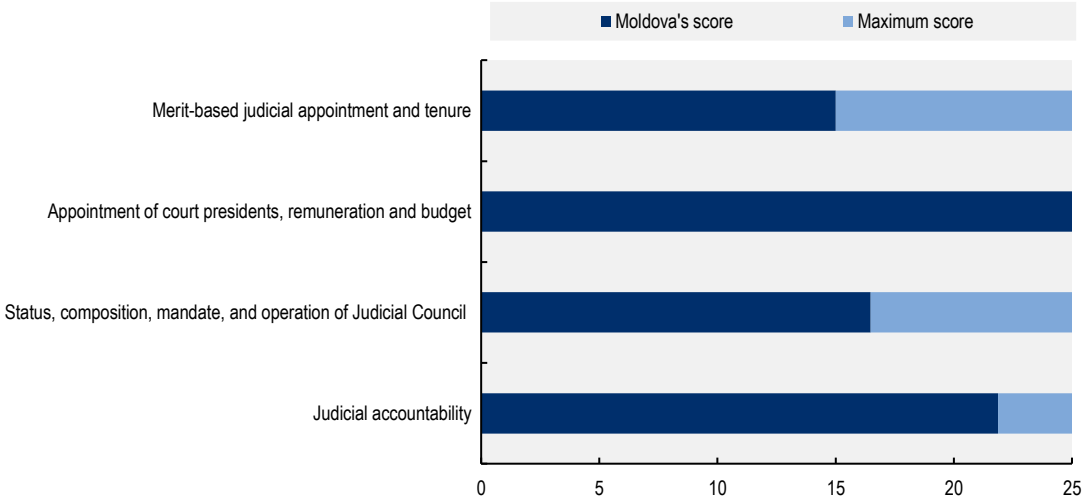


Figure 6.2. Performance level for Independence of Judiciary by indicators.



Indicator 6.1. Merit-based appointment of judges and their tenure is guaranteed in law and practice

Background

On 10 March 2022, Moldova adopted the Law amending the selection procedure for members of self-governing bodies of the judiciary and the prosecution service by introducing a mandatory integrity evaluation (the so-called pre-vetting) of candidates for the members of Superior Council of Magistracy (SCM), Superior Council of Prosecutors (SCP) and their specialised bodies. This evaluation was to be conducted by the Independent Integrity Assessment Commission – the "Pre-Vetting" Commission. At the end of the evaluation procedure, the "Pre-Vetting" Commission was to issue reasoned decisions regarding whether the candidates can be admitted to the relevant elections or the competitions. In April 2022, the "Pre-Vetting" Commission was established, consisting of six members – three appointed at the proposal

of the development partners of Moldova and three at the proposal of the parliamentary factions. The Commission started to work in June 2022 by launching checks of ethical and financial integrity of the candidates for the SCM from among judges.

At the end of 2022, the "Pre-Vetting" Commission has not completed this evaluation. The Law introducing this procedure was amended and the Commission's tenure was prolonged until June 2023. Consequently, in 2022, the Superior Council of Magistracy had only four out of 12 members and others could not be selected. The Superior Council of Magistracy functioned in its reduced composition until the decision of the Constitutional Court from 7 April 2022. After this date, the Superior Council of Magistracy had the operational mandate to decide on the organizational matters and could make no decisions related to judge's career, including appointment, transfer, promotion, or disciplinary sanctions. The two of the three subsidiary bodies of the SCM have been similarly non-functional in 2022 since autumn of 2021 – namely, the College for the Selection and Career of Judges, and the College for the Performance Evaluation of Judges; only the Disciplinary Board of Judges functioned in 2022.

With the total number of 434 judicial positions in Moldova in 2022, 55 unfilled judicial vacancies and 39 judges awaiting confirmation after their initial (probationary) term has run out under previous legislation until the end of 2022 constituted an important number of judges. This situation has put a strain on the judiciary in many ways, including a growing backlog of cases and other legal uncertainties regarding the status of judges who have not been confirmed in their positions but continued to receive judicial salary without participating in court proceedings.

Assessment of compliance

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

Element	Compliance
A. Judges are appointed until the legal retirement age (100%) OR	A (100%)
B. Clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice (70%)	

A – compliant (100% of the score). In Moldova, judges are appointed until the legal retirement age of 65. Initial (probationary) appointment of judges has been abolished by the Law on the amendment of the Constitution of the Republic of Moldova which was adopted on 23 September 2021 and entered into force on 1 April 2022. In 2022, there was no practice of application of life-time appointment without initial five-year term as provided for by constitutional amendments due to the situation with the mandate and composition of the Superior Council of Magistracy and two of its subsidiary bodies, as described above.

B – not applicable.

Benchmark 6.1.2.

A Judicial Council or another judicial governance body plays an important role in the appointment of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly appoints judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	X
B. The Judicial Council or another judicial governance body prepares a proposal on the appointment of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all candidates for judicial office and makes a justified recommendation to the relevant decision-making body (50%)	

Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

In Moldova, Superior Council of Magistracy (SCM) qualifies as a judicial governance body under this indicator and other indicators regarding Judicial Council. It is set up by the Constitution of Moldova. The Law on the Superior Council of Magistracy and the Law on the Organisation of the Judiciary define its powers and include main provisions on its operation. It is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court, and court administration, and manages its own budget.

In 2022, seven judges have been appointed for initial five-year term before Constitutional amendment entered into force introducing life-time appointment and no judges have been appointed for life under the amended procedure. According to final provisions of the Law on amendments to the Constitution of Moldova, the Superior Council of Magistracy was to apply old procedure to judges appointed for an initial term which had expired by 1 April 2022 – i.e., they were to be proposed for "confirmation". As of 30 March 2022, 39 judges had their five-year term in office expire; they received salary but did not have the right to review cases. Initially, these judges could not be proposed for confirmation because their evaluation could not be conducted by the College for Performance of Evaluation of Judges, as the College did not function in 2022, but evaluation was an obligatory part of such procedure. On 10 March 2022, Parliament amended the Law on Selection, performance evaluation and career of judges, repealing obligatory requirement for such evaluation. The Parliament also adopted a Law on Certain measures relating to the selection of candidates for membership of self-administration bodies of judges and prosecutors which extended the term of their members until the office is occupied by their successors. Further on 7 April 2022, the Constitutional Court ruled to strip the members with extended mandate of the right to issue decisions regarding the appointment, transfer, secondment, promotion, and application of disciplinary measures to judges, as well as regarding the appointment of Constitutional Court judges. At the same time, the Constitutional Court did not exclude the competence of the SCM to submit to the President of the country proposals for the confirmation in office of judges. Subsequently, in October and November of 2022, 15 judges have been appointed under this procedure of proposals for reconfirmation. Even though, the new procedure entered into force in April 2022, the SCM could not apply it in practice due to reduced mandate of its extended members and no selection of new members that year due to the factors described earlier. Evaluation below covers both procedures – the adopted in 2022 procedure and that which was applied in practice in the process of confirmation of judges.

B – non-compliant (70%). Under amended legislation, the Superior Council of Magistracy prepares a proposal on the appointment of the judge that is submitted to the President who may reject it once within 30 days of receipt of the proposal on grounds provided in the legislation and explained in the decision on refusal (in some cases this period can be extended by another 15 days). The Law on Status of Judges (Art. 11) lists three grounds for rejection, including undeniable evidence of incompatibility of the candidate with respective office (this is further explained in Art. 8); violation of the law by the candidate; and violation of the legal procedures for candidate's selection. Such procedure, if and once applied in practice, would make Moldova compliant with element B. However, it has not been applied in practice in 2022.

The procedure applied in 2022 was that of "confirmation" of judges. This procedure did not comply with requirements of the element B, under which the judicial council prepares proposals and submits them to the President who can reject these only in exceptional cases and on clear grounds provided in the legislation and explained in the decision. In total, out of 39 proposed judges for confirmation, 15 judges have been appointed through this procedure in October and November 2022. The President rejected the other proposals, making rejection a non-exceptional case. The decisions of the President to reject proposals have been published. The general reasoning has been provided for 13 cases, citing non-compliance with requirements of impeccable reputation and suggesting integrity concerns but without any factual references. Other factors have been cited for delays in Presidential review of the SCM proposals, including the absence of the information for grounded decisions by the SCM, such as evaluation of judges which was repealed for this procedure. These may be valid concerns and the situation in Moldova has been exceptional; however, such steps further undermine the clarity of procedure and grounds for appointment. In sum, the applied procedures have raised criticism for lack of transparency but also would not allow Moldova to comply with requirements that the procedures for appointment have been transparent and clearly set in the legislation and in practice.

A-C – not applicable.

Benchmark 6.1.3.

A Judicial Council or another judicial governance body plays an important role in the dismissal of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly dismisses judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	A (100%)
A. The Judicial Council or another judicial governance body prepares a proposal on the dismissal of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
B. The Judicial Council or another judicial governance body reviews all proposals for dismissal of judges and makes a justified recommendation to the relevant decision-making body (50%)	

A – compliant (100% of the score). In Moldova, since August 2022 (with enactment of amendments to the Law on Status of Judges), judges are dismissed by the decision of the Supreme Council of Magistracy without involvement of the President or Parliament. No decisions on judicial have been taken in 2022 in Moldova. The authorities reported that there were 2 dismissals, but in both cases, the Disciplinary Board issued the decision to dismiss the judges in May and November of 2021.

B-C – not applicable.

Benchmark 6.1.4.

Judges are selected:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

A – compliant In Moldova, candidates for judicial positions are first included into the pool of candidates (the Register). The candidates are automatically added to the Register if they graduated from the National Institute of Justice or applied and submitted all the required documents to the Secretariat of the Superior Council of Magistracy, and met the criteria defined in the law. The eligibility requirements are stipulated in the Law on Status of Judges and the Law on Selection, Performance Evaluation and Career of Judges. The procedure for applying, the list of documents with templates are regulated by the SCM Regulations on the organisation and conduct of the competition for filling the positions of the judge, vice-president and president of the court. The Register is kept by the Secretariat of the SCM; it is periodically updated and is available online on the website of the Council and any person interested in the career of the judge can apply at any time and will be added once all the documents have been submitted in line with eligibility criteria stipulated in the Law. Therefore, applying for the register is not a step in the competition for the vacancies but rather a prerequisite that all interested persons which are eligible need to comply with. There is no evaluation element at this stage, it is a formal check and the right to submit the set of documents for inclusion in the Register is not conditional on any action by the Superior Council of Magistracy (e.g., prior notifications, notices, etc.). The actual competition begins with the announcement of the vacancies for judges, which are announced for each category separately. When the vacancies for judicial positions appear, they are advertised through publication in the Official Gazette of the Republic Moldova and on the website of the SCM. As a rule, vacancies are announced for the next 6 months twice per year. The vacancies must contain a deadline for submission of applications, which is set by the SCM and cannot be less than 20 days. The candidates from the Register must inform the Secretariat of SCM in writing if they wish to apply for the vacancy announced. It appears that the vacancies are publicly available and not limited to any group of persons.

As explained above, only 7 new judges have been appointed in 2022 before the Constitutional amendments took place. Vacancies for these positions have been announced. For the remainder of the year, there has been no announcements for judicial vacancies, as the selection process of judges was suspended due to limited competences of the SCM between 7 April 2022 until 30 April 2023.

B – not compliant. In Moldova, the judicial vacancies are filled according to an average score calculated through different assessments. The following comprises the candidate's average score: 1) graduation exam results after the initial training at the National Institute of Justice (up to 50 points); the candidate takes an equivalent exam if he or she is not a graduate of NIJ; 2) points awarded by the College for Selection and Career of Judges (up to 30 points), and 3) points received through assessment by the Supreme Council of Magistracy (up to 20 points). Persons with the highest scores are selected and have the first choice for vacancies. Score awarded by the National Institute of Justice is based on the examination of academic aptitude and obtained knowledge and is calculated based on the formula provided for in the SCM Regulation on the criteria for selection, promotion, and transfer of judges. Score awarded by the College for Selection and Career of Judges is based on the criteria measuring the level of knowledge and professional skills; the ability to apply knowledge in practice; seniority as a judge or in other legal profession; the qualitative and quantitative indicators of the activity carried out in the function of judge

or, as the case may be, in other specialized legal positions; compliance with ethical standards; didactic and scientific activity. The criteria are defined in detail in the said SCM Regulation with the indicators for evaluating these criteria provided in the Annexes. Integrity checks are conducted by the specialised bodies, including NIA and NAC upon the request of SCM.

Unlike with other assessments, there is no detailed regulation on how the Supreme Council of Magistracy awards scores. The rules are generic and provide, for example, that the Council evaluates motivation of the candidates and their reputation, interviews candidates, and that each member of the Council makes an individual judgement. In 2022, the legislation was no amended and did not include specific criteria and details of assessment ensuring a merit-based selection. In June 2023, the law on Selection and Evaluation of Judges has been adopted, which requires that SCM adopts new rules and improves criteria for selection and evaluation of judges. The authorities shared that such rules have already been adopted and are being applied by the Supreme Council of Magistracy. The monitoring team welcomes this development and looks forward to following up on this issue in the future monitoring.

Another issue regarding judicial appointments is polygraph testing of judicial candidates. It falls outside of the scope of the monitoring, but the monitoring team believes it merits attention. In Moldova, Law on Status of Judges requires that candidates for a judicial office must be polygraph tested. At the on-site, judges shared that they found this requirement problematic, as the test questions were ambiguous and subjective. On the other hand, Moldovan authorities have noted that although the polygraph test is provided by law, since the adoption of the law, no judge followed this procedure. No cooperation agreement was signed by the SCM to apply the polygraph tests, making them non-applicable in practice and removing the actual risks. Nevertheless, a similar requirement for prosecutors has been abolished. The monitoring team agrees that such testing, if ever applied in practice, might be subjective, excessive and cannot properly reflect the judicial integrity. It is not a reliable tool to evaluate judicial candidates. In addition, the monitoring team believes that since the polygraph testing is performed by the executive branch (the police and the intelligence office), as well as by the NAC, it can undermine independence of the judiciary.

Benchmark 6.1.5.

Judges are promoted:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

A – compliant. In Moldova, judges are promoted through a competition organised by the SCM for the positions of judges in the hierarchically superior court The competition is launched through the announcement of respective vacancies similar to the appointment of judges. The SCM announces the vacancies on its website, as a rule every 6 months or when the vacancies appear, if there is an urgent need to fill the vacancy, and sets the deadline for applying, which cannot be less than 20 days. The eligibility criteria are identified in the Law on Selection, Performance Evaluation and Career of Judges, and any eligible candidate has opportunity to apply. Candidates for promotion, similarly to those who apply for judicial appointment for the first time, are included in the Register, and at the announcement of the competition may submit their application with all necessary files to the SCM's Secretariat or submit a written refusal to take part in the particular competition.

B – not complaint. Evaluation of candidates for higher judicial positions follows similar logic to that for the first-time appointments. The average score is composed of scores received as a result of performance

evaluation of the candidate for higher position (up to 50 points) conducted by the College for Evaluation of Judges regularly (once every three years) or in the run up to the competition for promotion (if the regular evaluation is more than 2 years old); scores awarded by the College for Selection and Career of Judges (up to 30 points), and by Supreme Council of Magistracy (up to 20 points). Scores awarded by the College for Evaluation of Judges are based on criteria evaluating judges in terms of efficiency, quality of work, integrity, and continuous professional training – with each of these criterion further broken down into indicators (for example, "efficiency criterion" is composed of 5 indicators, such as case resolution rate, compliance with reasonable deadlines in the process of administration of justice, compliance with deadlines for drafting of decisions, etc). Scores awarded by the College for Selection and Career of Judges are based on the criteria described under benchmark 1.4. The assessment conducted by the SCM has the same deficiencies as described under benchmark 1.4.

Indicator 6.2. Appointment of court presidents and judicial remuneration and budget do not affect judicial independence

Assessment of compliance

Benchmark 6.2.1.

Court presidents are elected or appointed:

Element	Compliance
A. By the judges of the respective court or by the Judicial Council or another judicial governance body	✓
B. Based on an assessment of candidates' merits (experience, skills, integrity)	✓
C. In a competitive procedure	✓

A – compliant. In Moldova, court presidents are appointed by the Superior Council of Magistracy.

B – compliant. According to the SCM Regulation on the Criteria, Indicators and Evaluation Procedure of Judicial Performance, candidates for the office of president or vice-president of the court must be assessed on the quality, efficiency and integrity in the position of judge; the skills of the judge for occupying the requested position; judge's didactic and scientific activity; experience in administrative functions; participation in activities related to court administration; and the candidate's elaboration of a plan or development strategy for the court for the next four years. All of these are further described in the Regulation with Annexes offering indicators, sources for verification and scoring weights.

C – compliant. In Moldova, court presidents are appointed through a competition organised by the SCM that announces vacancies for such judicial positions according to the procedure described above for the selection of judges.

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

Element	Compliance
A. Was not less than 90% of the amount requested by the judiciary or, if less than 90%, is considered sufficient by the judiciary	✓
B. Included the possibility for the judicial representatives to participate in the consideration of the judicial budget in the parliament or the parliament's committee responsible for the budget	✓

A – compliant. In 2022, budgetary funding allocated to the judiciary constituted 108.7% from the requested budget.

B – compliant. According to information provided by Moldova authorities, judicial representatives do not participate in the consideration of the judiciary budget in the parliament or the parliamentary committee responsible for the budget. However, amendments to the Article 121 of the Constitution that entered into force on 1 April 2022, state that "In the process of drafting, approving and amending the budget of the courts of law, the advisory opinion of the Superior Council of Magistrates is requested. The Superior Council of Magistrates is entitled to submit proposals to the Parliament on the draft budget of the courts of law." During the on-site visit, members of the SCM shared that they did not provide advisory an opinion but provided their proposals when the budget was developed, and their proposals have been taken into account.

Benchmark 6.2.3.

The level of judicial remuneration:

Element	Compliance
A. Is fixed in the law	✓
B. Excludes any discretionary payments	✓

A – compliant. Judicial remuneration is fixed in the Law on the unitary salary system in the budgetary sector, according to Moldovan authorities. However, the judges explained that this Law de facto froze the salaries of the judges and prosecutors and they have not been updated since 2018 despite the inflation. On one hand, it was noted by the authorities that such freeze was applied to all public servants with exception of the priority groups (such as teachers, doctors, court clerks, etc) and that judges benefit from special reference value established in the Law on state budged, which may be revised annually. It was also noted that in December 2022, the Constitutional Court decided that judicial salaries have to be indexed annually based on the inflation rate, nevertheless, the representatives of the judiciary met at the onsite visit expressed concerns with the remuneration levels for their profession.

B – compliant. There are no discretionary payments for judges under Moldovan legislation.

While Moldova is compliant under both elements of this benchmark, the issue of judicial remuneration is of concern. The monitoring team extensively discussed this issue with judges and found the concerns they raised reasonable. First, the salaries for judges were capped in 2018 as the reference value has been capped and the salaries have not changed since then. Unlike other civil service professions, judges do not

benefit from bonuses for performance and cannot be compensated for overtime – which has been used to increase salaries for other civil servants. The judges also do not benefit from other additional payments unlike some others, including in the legal profession, such as compensation for travel expenditures, housing, etc. According to the information provided by Moldovan authorities, in 2022 – a judge in the beginning of the career had a gross monthly salary of approximate equivalent of 1050 EUR. Under the previous law no longer in force, the salary would have been substantially higher. Second, there is a small difference in salaries between the various levels of seniority of judges and between the judges holding managerial positions vs. those who do not. For example, according to the data provided by authorities, salary level of the judge with more than 12 years of experience as a judge was approximately only 100 euros higher than that of the first-time judge (the salary amounting to approximate equivalent of 1150 EUR). Despite some of the positive incentives for participation on administration board of the National Institute of Justice or of the SCM boards, which provide for allowances equal to the number of attended sittings of the board, the difference between the salary of the President of the Court and that of the new judge is approximately 350 euros (the salary amounting to approximate equivalent of 1350 EUR). Finally, according to Moldovan authorities, in some cases judges may receive a lower salary that the prosecutor of the same level; this is also the case for court clerks if compared to the similar staff at the prosecution office. The monitoring team believes that the legislative changes of the regulation of the judicial remuneration had a negative effect on the profession by considerably lowering the level of actual salaries, exposing judges to higher corruption risks, making profession less attractive for young law graduates, and decreasing motivation for upward movement within the profession. Moldova needs to find appropriate avenues to address this issue.

Indicator 6.3. Status, composition, mandate, and operation of the Judicial Council guarantee judicial independence and integrity

Background

In Moldova, the Superior Council of Magistracy is set up by the Constitution of Moldova. The Law on the Superior Council of Magistracy and the Law on the Organisation of the Judiciary define its powers and include main provisions on its operation. It is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court and court administration, and manages its own budget. Three of its subsidiary bodies also qualify as judicial governance bodies according to the definition used for this monitoring and will be evaluated under this indicator. These bodies are the College for the Selection and Career of Judges, the College for the Evaluation of the Performance of Judges, and the Disciplinary Board of Judges. According to the monitoring methodology, if a country has more than one judicial council or a similar body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.

As mentioned earlier, in 2022, the Superior Council of Magistracy had only four out of 12 members, while others could not be selected for reasons beyond the scope of fixing by the judiciary. Until April 2022, the SCM functioned in its reduced composition, when the decision of the Constitutional Court limited its extended-mandate members competences, eliminating their powers to make decisions related to judge's career, including appointment, transfer, promotion or disciplinary sanctions. However, the powers of SCM members to propose judges for confirmation have been kept and exercised in practice in 2022. The SCM also exercised other duties related to the court administration and other legal competences provided by the law (e.g. on budget issues, training of judges, etc.). The two of the three subsidiary bodies of the SCM (the College for the Selection and Career of Judges and the College for the Performance Evaluation of Judges) did not function in 2022; only the Disciplinary Board of Judges functioned in 2022.

Assessment of compliance

Benchmark 6.3.1.

	Compliance			
	Superior Council of Magistracy	**College for Selection and Career of Judges**	**College for Evaluation of Performance of Judges**	**Disciplinary Board of Judges**
The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers	✓	X	X	✓

Non-compliant.

Superior Council of Magistracy: Section 2 of the Chapter IX of the Constitution is solely devoted to the Superior Council of Magistracy covering the Council's role, composition, and powers. The Law on Superior Council of Magistracy provides for procedures and functioning of the Council. In 2022, Superior Council of Magistracy functioned and adopted various decisions, although with limited competencies of the members whose mandates have been extended, as described above.

The College for the Selection and Career of Judges: Law on Selection, Performance Evaluation and Career of Judges, Title I, Chapter 2 sets up this body and defines its powers. In 2022, the College for the Selection and Career of Judges did not function.

The College for the Evaluation of the Performance of Judges: Law on Selection, Performance Evaluation and Career of Judges, Title II, Chapter 2 sets up this body and defines its powers. In 2022, the College for the Evaluation of the Performance of Judges did not function.

The Disciplinary Board of Judges: Law on Disciplinary Responsibility of Judges, Chapter II regulates the set up and powers of the Disciplinary Board of Judges. The Disciplinary Board of Judges was functioning based on this law in 2022.

The benchmark requires that all the judicial self-governance body/ies function based on the law, and in 2022 only two of the four relevant bodies functioned in Moldova, including the Superior Council of Magistracy and the Disciplinary Board of Judges, Moldova is not compliant with this benchmark.

Benchmark 6.3.2.

The composition of the Judicial Council and other judicial governance bodies includes not less than half of the judges who:

Element	Compliance			
	Superior Council of Magistracy	College for Selection and Career of Judges	College for Evaluation of Performance of Judges	Disciplinary Board of Judges
A. Are elected by their peers	✓	✓	✓	✓
B. Represent all levels of the judicial system	✓	X	X	X

A – compliant. In Moldova, Superior Council of Magistracy is composed of 12 members, six of these members are elected by their peers – by a secret ballot by the General Assembly of Judges. The College for the Selection and Career of Judges and the College for the Evaluation of the Performance of Judges are both composed of five members of which three are judges elected by their peers by a secret ballot by the General Assembly of Judges. The Disciplinary Board of Judges is composed of seven members of which four are judges elected by their peers by a secret ballot by the General Assembly of Judges.

B – non-compliant. In Moldova, only SCM members who are judges represent all levels of the judicial system. Four of them are elected from the courts of first instance, one from the courts of appeal and one – from the Supreme Court. There is no requirement on representation of all levels of the judicial system among judicial members of the other three bodies.

Benchmark 6.3.3.

	Compliance			
	Superior Council of Magistracy	College for Selection and Career of Judges	College for Evaluation of Performance of Judges	Disciplinary Board of Judges
The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives)	✓	✓	✓	✓

Compliant. According to the Constitution, Article 122, six out of 12 members of the Superior Council of Magistracy are persons “who do not work within the bodies of legislative, executive or judicial power, and are not politically affiliated.” On its face it appears that Moldova meets the requirements of the benchmark as these members do not represent the government or the state. As regards the other bodies, two of them

– the College for the Selection and Career of Judges and the College for the Evaluation of the Performance of Judges – include two out of five members who are representatives of the civil society selected by the SCM. Three out of seven members of the Disciplinary Board of Judges are selected by the SCM from representatives of the civil society.

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

Element	Compliance			
	Superior Council of Magistracy	College for Selection and Career of Judges	College for Evaluation of Performance of Judges	Disciplinary Board of Judges
A. Are published online	✓	N/A	N/A	✓
B. Include an explanation of the reasons for taking a specific decision	✓	N/A	N/A	✓

A-B – compliant. In 2022 in Moldova, according to the authorities all decisions of the Superior Council of Magistracy have been published online on its official website. The decisions of its specialised body (the Disciplinary Board) that functioned in 2022 have been published as well. The College for the Selection and Career of Judges and the College for the Evaluation of the Performance of Judges did not issue any decisions in 2022. Examples of the published decisions reviewed by the monitoring team included explanation of the reasons for taking a specific decision.

Indicator 6.4. Judges are held accountable through impartial decision-making procedures

Assessment of compliance

Benchmark 6.4.1.

The law stipulates:

Element	Compliance
A. Clear grounds for the disciplinary liability of judges that do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds	x
B. All main steps of the procedure for the disciplinary liability of judges	✓

A – not compliant. Grounds for the disciplinary liability of judges are regulated by the Law on Disciplinary Liability of Judges, Art. 4. Most grounds appear to be clear. However, the monitoring team considers several grounds to be ambiguous and allowing unlimited discretion of the decision-making body, including

"the actions of the judge in the process of administration of justice which demonstrate serious and obvious professional incompetence." This ground was abrogated by amendments which entered into force in April 2023 – however, in 2022 this ground was still valid. Similarly, Art. 4 (p) states that "other acts that harm professional honour or probity or the prestige of justice to such an extent as to undermine confidence in justice, committed in the performance of duties or outside them, which, according to their seriousness, cannot be qualified only as violations of the Code of ethics and professional conduct of judges" constitute a disciplinary violation. This ground has not been abrogated.

B – compliant. The Law on Disciplinary Liability, Chapter 3, regulates the main steps of the disciplinary liability procedure for judges. It defines who can initiate the proceeding and how, how the reports are registered and who investigates the allegations, the rights and obligations of the judge in question, the process of review of the results of the investigation and decision-making, appeal procedures to the Disciplinary Board and to the SCM. Technical details of the procedures are further elaborated in the SCM Regulations.

Benchmark 6.4.2.

	Compliance
The disciplinary investigation of allegations against judges is separated from the decision-making in such cases	✓

Compliant. In Moldova, the disciplinary investigation of allegations against judges is carried out by the inspector-judges of the Judicial Inspection. Once a disciplinary investigation has been completed, the inspector-judge submits the disciplinary case file report to the Disciplinary Board. A disciplinary file is then randomly assigned to a rapporteur from among members of the Disciplinary Board. The Disciplinary Board decides on the case. These are two separate structures and different staff are dealing with the investigation of allegations and decision-making in disciplinary cases.

Benchmark 6.4.3.

	Compliance
There are procedural guarantees of the due process for a judge in disciplinary proceedings, namely the right to be heard and produce evidence, the right to employ a defence, the right of judicial appeal, and these guarantees are enforceable in practice	✓

Compliant. In Moldova, the judge has the right to be heard and produce evidence – during the investigation of the complaint by the Judicial Inspection, which starts the disciplinary investigation and collects the data, and during the review of the case by the Disciplinary Board. The judge has the right to be represented by another judge or be assisted or represented by a lawyer. The judge may appeal the decision of the Disciplinary Board to the Superior Council of Magistracy and then further these decisions can be appealed in the Appellate Court (first instance court) and then the Supreme Court of Justice. Based on the amendments from February 2023, which entered into force in April 2023, the SCM decisions are to be appealed to the Supreme Court of Justice directly to reduce the level of appeals in disciplinary matters Moldovan authorities maintain that these safeguards are enforceable in practice.

Benchmark 6.4.4.

	Compliance
There is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice), or such sanctions are not used in practice	✓

Compliant. In Moldova, Criminal Code's Article 307 punishes with a fine or imprisonment, as well as deprivation of the right to hold certain positions or exercise certain activities the delivery by a judge of a judgment, sentence, decision, or ruling contrary to the law. However, in 2022, the Superior Council of Magistracy did not give consent to the prosecution of judges under Article 307 of the CC and no sanctions under this article were applied in practice. Therefore, Moldova meets the requirements of this benchmark.

Box 6.1. Good practice - Professional training for the Presidents and Vice Presidents of Courts

In Moldova, the candidates for the positions of the Presidents and Vice Presidents of courts have flagged the need for targeted training on issues related to court management. The Superior Council of Magistracy has addressed this need and requested that the National Institute of Justice (NIJ) prepares such training course and makes it available for more to the interested candidates. It has also requested that targeted training is provided to the Court Presidents and Vice Presidents which currently occupy these positions, considering their specific roles and duties. The NIJ adapts annually the curricula for these trainings based on judge' needs. In 2023, the Superior Council of Magistracy is to approve improved rules on minimum quality standards on organizational and administrative activity of district courts and courts of appeal.

NIJ National Institute of Justice has developed such courses and in 2022, 270 interested persons took part in such training, which don't hold the position of the Court Presidents and Vice Presidents. This illustrates the high interest to these issues and providing interested candidates and current position holders to build up the necessary skills.

This is a good practice which could be further replicated throughout the region. It recognizes the need for specific management skills, which are outside of the regular judicial portfolio and provides for opportunities to equip the judges with the necessary management skills if they seek or already hold management positions.

Assessment of non-governmental stakeholders

Non-governmental stakeholders shared that they closely follow the work of the Pre-Vetting Commission and have been awaiting General Assembly of Judges meeting to select new SCM members. They opined that judiciary was in a difficult position, with many judges resisting the change and many being negatively affected through extremely high workload and low pay.

7 Independence of public prosecution service

In Moldova, the Prosecutor General is selected and proposed for appointment by the Superior Council of Prosecutors. Clear grounds for the dismissal were stipulated in the law, however, the main steps of the procedure were not regulated. There was no appointment or dismissal of Prosecutor General in 2022. The Superior Council of Prosecutors was the main body of the prosecutorial self-governance in Moldova. However, it was not composed of majority of prosecutors elected by their peers, and civil society representatives did not constitute more than one third of its composition. This was also the case with three sub-bodies of the Council. Vacancies for prosecutorial positions and promotions have been published online in 2022. Prosecutors were selected through competitions and based on merit. Grounds and procedure for disciplinary liability of prosecutors were stipulated in law, however some were too broad allowing an unlimited discretion of the decision-making body. Investigation into allegations of disciplinary violations was separated from the decision-making in such cases. Budget and remuneration of prosecutors complied with the benchmarks; however, salaries of prosecutors have not changed since 2018 and cannot provide sufficient insulation from corruption risks.

Figure 7.1. Performance level for Independence of Public Prosecution Service is outstanding.

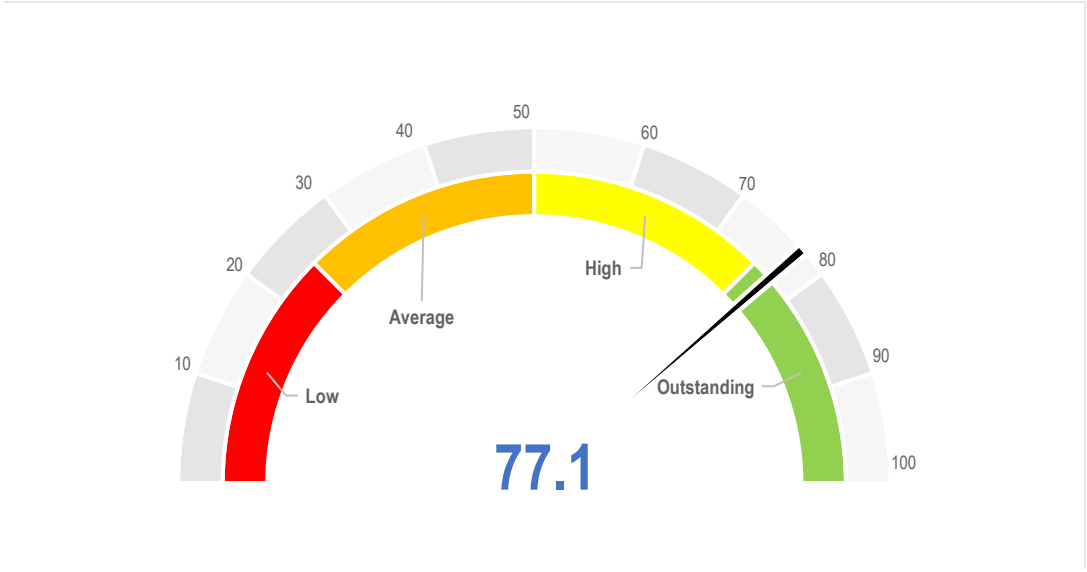
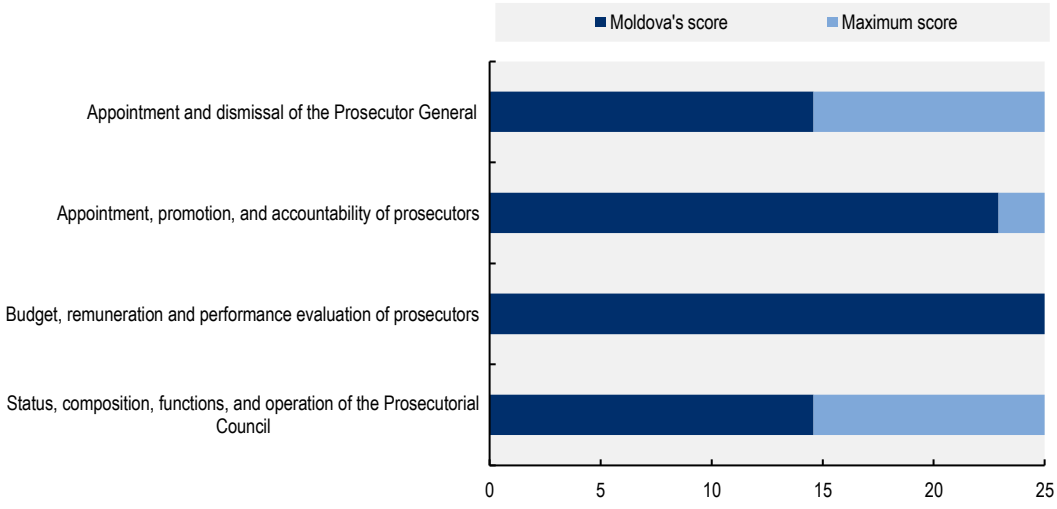


Figure 7.2. Performance level for Independence of Public Prosecution Service by indicators.



Indicator 7.1. Prosecutor General is appointed and dismissed transparently and on objective grounds

Background

In Moldova, the Prosecutor General was suspended from his position in October 2021 with initiation of the criminal investigation against him. Immediately an Interim Prosecutor General was selected among the acting prosecutors by the Superior Council of Prosecutors. On 11 November 2022, a new Interim Prosecutor General was selected by the Council and appointed on 12 November 2022 by the President to serve until the end of suspension of the Prosecutor General.

Assessment of compliance

Benchmark 7.1.1.

A prosecutorial governance body or a committee, which is composed of non-political experts (e.g., civil society, academia, law professors, attorneys, human rights defenders), who are not public officials and are not subordinated to any public authorities, reviews the professional qualities and integrity of all candidates for the Prosecutor General and provides its assessment the appointing body:

Element	Compliance
A. The procedure is set in the legislation	✓
B. The procedure was applied in practice	N/A

In Moldova, Superior Council of Prosecutors (SCP), a prosecutorial governance body, announces and organises the competition for the position of the Prosecutor General (PG). SCP shortlists the candidates based on their eligibility under set criteria and interviews them. As a result, each member of the SCP gives a score to the candidate, based on these scores the average score is calculated. The candidate with the highest score is then proposed by the Council to the President for appointment to the position of the PG. The President can reject the candidacy only once. For the repeat proposal of the same candidate, the Council should confirm the candidate by a vote of at least 2/3 of its members. The President then must appoint the candidate to the position of the PG. The Council should review professional qualities and integrity of candidates and decide on the final selection of the candidate proposed for appointment. This appears to meet the general requirements set in this benchmark.

A – compliant. For element A, it is sufficient to have all required components of the procedure set in the legislation. In Moldova, the procedure described above, and the role of the SCP is stipulated in the Law on Prosecution Service (Art. 17 and 20). The Law on the Verification of Holders and Candidates for Public Positions regulates procedure for integrity checks of the candidates.

B – not applicable. In 2022, there was no Prosecutor General's appointment process in Moldova.

The quality of the evaluation of the professional qualities and integrity carried out by a prosecutorial governance body does not fall into the scope of the benchmark and is not assessed for compliance with this benchmark. The practical application of the above procedure did not occur in 2022. However, the monitoring team notes that, although the eligibility requirements are stipulated in the Law on Prosecution Service, the specific criteria are to be approved by the SCP's regulation. There was no such regulation in force in 2022. The previous regulation on how to organise, conduct and evaluate the results of the selection of the candidate for the position of the Prosecutor General, which stipulated such criteria, was revoked, and no other regulation was adopted to replace it. During the onsite visit, members of the SCP shared that

during the appointment of the Interim Prosecutor General they used old criteria from the revoked Regulation which was no longer in force. The monitoring team urges Moldova to adopt new detailed requirements for the future selection process.

Benchmark 7.1.2.

The procedure for pre-term dismissal of the Prosecutor General is clear, transparent, and objective:

Element	Compliance
A. Grounds for dismissal are defined in the law	✓
B. Grounds for dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds	✓
C. The law regulates the main steps of the procedure	X
D. The law requires information about the outcomes of different steps (if there are several steps) of the procedure to be published online	N/A

A – compliant. In Moldova, the grounds for pre-term dismissal of the Prosecutor General are defined in the Law on Prosecution Service. Art. 57 and 58 provide an exhaustive list of grounds for pre-term dismissal of the PG, and Art. 31-1 regulates performance evaluation of PG and may result in the initiation of dismissal.

B – compliant. Grounds for dismissal in most cases expressly state actions or inaction that can result in dismissal. However, in the monitoring team’s opinion, one ground could be further clarified. Art. 57 (i) stipulates that the PG can be dismissed “if it is established, after his or her appointment, that there is at least one reason why the person cannot be appointed as a prosecutor.” Moldovan authorities explained that the text refers to the conditions stated by law, that must be met to become a prosecutor, like those listed in Art. 20 Law on Prosecution Service. These conditions must exist not only upon appointment, but throughout the tenure of office. If at least one of the conditions is missing, then the termination of the service is ordered. Although the monitoring team did not consider it a major problem, it recommends to reformulate this ground of dismissal, and make a clear reference to Art. 20 of Law on Prosecution Service.

One ground is further broken down into more specific grounds, as required by this element of the benchmark. According to the Law on Prosecution Service, Art. 58 para. 7, “The General Prosecutor may be dismissed from the position before the expiration of the mandate, by the President of the Republic, upon the proposal of the Superior Council of Prosecutors, if, in the framework of the evaluation of the performances carried out according to the provisions of Art. 31/1, he gets the qualification "unsatisfactory". What constitutes “unsatisfactory qualification” is detailed in the SCP Regulation on Performance Evaluation of the Prosecutor General adopted in 2021 and updated in January 2022. It provides that the activity of the General Prosecutor is appraised based on eight criteria which are further broken down into indicators with specific scores. With these further details, the monitoring team believes that the grounds for dismissal are not excessively broad or ambiguous to allow unlimited discretion of the SCP or the President.

C – non-compliant. The Law on Prosecution Service stipulates that the pre-term dismissal can be initiated by the proposal of the Superior Council of Prosecutors to the President of Moldova who then issues the relevant decree (1) in cases with circumstances independent of the will of the parties (Article 57); (2) in cases of Prosecutor General getting the qualification “unsatisfactory” in the framework of the evaluation of the performance (Article 58 (7)), or (3) in cases when Superior Council of Prosecutors applied disciplinary sanction of dismissal from office. However, there is no procedure set in law regarding how the Council decides to initiate the dismissal – in particular – as to how this process is organised: what is required in terms of vote or who makes the decision that such proposal should be submitted to the President, who

drafts the proposal and submits it to the President, how these steps are communicated to the Prosecutor General and the public, what the rights are and the role of the Prosecutor General in the initiated procedures for dismissal etc. SCP representatives stated that they did not adopt a regulation stipulating the procedure, because this possibility is not expressly provided to the Council by law and SCP cannot add to the law by its secondary legislation. The President can initiate the pre-term dismissal in other cases stipulated in Article 58. This procedure is also not further elaborated. During the on-site, SCP representatives acknowledged the above shortcomings and believed members of the Parliament should be made aware of the need for amendments.

D - not applicable. In 2022, the procedure did not envisage any steps, as described above, according to the monitoring methodology the element is therefore not applicable.

Benchmark 7.1.3.

	Compliance
There were no cases of dismissal of the Prosecutor General outside the procedure described in benchmark 1.2	N/A

Not applicable. There were no cases of dismissal of the Prosecutor General in Moldova in 2022. This benchmark is therefore not applicable.

The monitoring team was alerted to the fact that although in 2022 there were no cases of dismissal of the Prosecutor General, in May 2023, the Superior Council of Prosecutors has submitted to the President of Moldova such proposal regarding the suspended Prosecutor General. This was done based on the Report of the Commission for the Evaluation of the Performances of the Prosecutor General, which assessed the performances of the Prosecutor General as “unsatisfactory”. The evaluation was initiated in November 2021 and was finalised by May 2022. In mid-September of 2023, the President’s decision was pending. The monitoring team has not analysed this process in the current report and will follow-up on it in the next monitoring, as it formally falls outside the timeframe of this monitoring.

Indicator 7.2. Appointment, promotion, and accountability of prosecutors are based on fair and clear mechanisms

Background

In Moldova, the same procedures for appointment and promotion are applied to all prosecutors apart from the Chief and Deputy Chief of the Specialised Prosecution Offices, and the Chief Prosecutor of the Prosecution Office of the Autonomous Territorial Unit (ATU) of Gagauzia. However, leadership positions of the Specialised Prosecution Offices are equated to that of the Deputy Prosecutor General – and therefore do not fall into the scope of this benchmark and the selection of the Chief Prosecutor of the Specialised Anti-Corruption Office is reviewed under PA 8. Selection of Chief Prosecutor of the Prosecution Office of the ATU of Gagauzia is reviewed separately under relevant benchmark of Indicator 4.

Eligibility criteria are defined in the legislation both for candidates that wish to become prosecutors and those who are already prosecutors and wish to apply for another prosecutorial position, including higher position and the position of the Chief and Deputy Chief Prosecutor of the Prosecutor’s Office of the ATU of Gagauzia.

The legislation provides for maintaining of the database of persons interested in the career of the prosecutors – Register of Candidates for Filling Vacant Positions (Register). Law on the Prosecution

Service, Art. 22 provides for the list of documents that the candidate needs to submit to be entered into the Register. SCP Regulation on the Superior Council of Prosecutors stipulates further details of the procedure. In particular, that once an application with all required documents is submitted, the SCP notifies candidates of the initiation of the procedure to verify their submitted documents, including those required by the Law on the Verification of Holders and Candidates for Public Positions (integrity checks), and medical certificates. Once all required documents have been received and verified – all candidates who submitted the full package of documents and passed the necessary verifications are entered into the Register regardless of existence of vacancies at the time of registration. The Register is kept by the Secretariat of the Superior Council of Prosecutors and contains three lists: (i) the list of candidates to the vacant position of prosecutor (candidates for first time appointment as prosecutors), (ii) the list of prosecutors applying for transfer or promotion, and (iii) the list of prosecutors applying for appointments as Chief Prosecutor or Deputy Chief Prosecutor, including to the Prosecution office of the ATU of Gagauzia. The Register is made public on the website of the Council and any person interested in the career of the prosecutor can apply at any time and will be added once all the documents have been submitted in line with eligibility criteria stipulated in the Law. Therefore, applying for the register is not a step in the competition for the vacancies but rather a prerequisite that all interested persons which are eligible need to comply with. There is no evaluation element at this stage, it is a formal check and the right to submit the set of documents for inclusion in the Register is not conditional on any action by the Superior Council of Prosecutors (e.g. prior notifications, notices, etc.). The actual competition begins with the announcement of the vacancies for prosecutors, which are announced for each category separately.

Assessment of compliance

Benchmark 7.2.1.

All prosecutors (except for Deputies Prosecutor General) are selected based on competitive procedures and according to merits:

Element	Compliance
A. All vacancies are advertised online	✓
B. Any eligible candidate can apply	✓
C. Prosecutors are selected according to merits (experience, skills, integrity)	✓

A – compliant. The vacancies are made public on the website of the Superior Council of Prosecutors periodically, as a rule once every six months. During 2022, SCP announced four competitions for the position of the prosecutors: two competitions for graduates of the National Institute of Justice (14 vacancies), one for candidates with five years of legal experience (four vacancies), one for candidates with 10 years of experience as a prosecutor, judge, or lawyer (four vacancies).

B – compliant. The eligibility criteria are defined in the national legislation, as required by the benchmark and they are reasonable and non-restrictive. In 2022, in certain cases, the deadlines for applications were short - when positions were announced for graduates of the National Institute of Justice, the deadline was six days. Authorities explained that all eligible candidates have been notified by email and could participate. These competitions have been for graduates of the NIJ who are aware of the competition and were expecting the announcement and needed six days to decide whether to provide formal agreement to take part in the selection process as all of the documents have already been submitted and did not require preparation. While the monitoring team identified this formal exception to the standard, it did not believe it represented an obstacle for applicants to take part and did not create a discriminatory situation.

C – compliant. All candidates from the Register are assessed by the College for Prosecutors' Selection and Career, a sub-body of the Superior Council of Prosecutors, against the criteria identified in the Law on Prosecution Service and according to the Regulation approved by the Superior Council of Prosecutors. The criteria include experience, skills, and integrity – for example: "a) the level of professional knowledge and skills; b) the ability in practical application of knowledge; c) length of service as a prosecutor or other positions laid down in Article 20; d) quality and effectiveness in office of public prosecutor; e) compliance with the rules of professional ethics; f) scientific and educational activity."

The procedure and criteria are published on the website of the Council as required by the law. Legislation also stipulates how the scores are assigned and calculated. Candidates which refuse to undergo an assessment are removed from the Register. Legislation requires that results of the assessment are published within two days on the Website of the Council. Results of the assessment can be appealed. According to Moldovan authorities, in 2022, there were no cases when any of these procedures have not been followed (e.g., late publication of the results of assessment, appointment of prosecutors outside of procedure, etc.).

Benchmark 7.2.2.

All prosecutors (except for Deputies Prosecutor General) are promoted based on competitive procedures and according to merits:

Element	Compliance
A. Vacancies are advertised to all eligible candidates	✓
B. Any eligible candidate can apply	✓
C. Prosecutors are promoted according to merits (experience, skills, integrity)	✓

A – compliant. The announcement of the competition for promotion is published on the website of the Superior Council of Prosecutors. According to Moldovan authorities, all promotion competition notices were published online in 2022. In particular, the Superior Council of Prosecutors made 10 announcements regarding competitions for promotion/transfer of prosecutors, of them – seven were for leadership positions (to fill 128 vacancies), three for promotion or transfer (to fill 27 vacancies), and two announcements – for a competition to appoint the Chief Prosecutors of the Anticorruption Prosecutor's Office and the Prosecutor's Office for Combating Organized Crime and Special Cases.

B – compliant. The eligibility requirements are stipulated in the law, along with the list and format of documents that the applicants must submit. They appear not to be limiting. The deadlines for applications were 20 days or more and appear to be reasonable. In the case of the competition for the position of Chief Prosecutor of the Anticorruption Prosecutor's Office, the deadline has been prolonged, as was needed (see more details under PA 8).

C – compliant. Under regular procedure, the candidates from the Register (the list of prosecutors applying for transfer or promotion) can apply for the promotion competitions. Candidates which refuse to apply for the vacant positions more than twice are removed from the Register. Candidates who applied are assessed by the College for Prosecutors' Selection and Career, a sub-body of the Superior Council of Prosecutors, against criteria identified in the Law on Prosecution Service and according to the Regulation approved by the Superior Council of Prosecutors. The criteria include experience, skills, and integrity. The procedure and criteria are published on the website of the Council as required by the law. Legislation also stipulates how the scores are assigned and calculated in the process. According to Moldovan authorities, during 2022, there were no cases when any of these procedures have not been followed in practice (e.g. late

announcement of the promotion competition notices, late publication of the results of assessment, appointment of prosecutors to higher positions outside of procedure, etc.).

One issue which Moldova may wish to address. Namely, a prosecutor, with his consent, can be delegated by the Prosecutor General for up to 2 years to a higher paid position without meeting the conditions laid out by the law for that position. While, this has not happened in practice, the delegation has an exceptional character, cannot exceed a total duration of 2 years, the salary difference in higher positions is not substantial, and the monitoring team doesn't believe this has effect on the compliance rating - potentially, this can create a situation in which a regular promotion procedure could be bypassed and could further lead to "de facto promotion" not on merit, creating risk of interference with the cases handled by these prosecutors. The monitoring team recommends Moldova to consider removing the possibility for such a "delegation" or transferring the powers of delegation to the SCP.

Benchmark 7.2.3.

Clear grounds and procedures for disciplinary liability and dismissal of prosecutors are stipulated:

	Element	Compliance
A.	The law stipulates grounds for disciplinary liability and dismissal of prosecutors	✓
B.	Grounds for the disciplinary liability and dismissal are clear and do not include such grounds as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" unless the legislation breaks them down into more specific grounds	x
C.	The law regulates the main steps of the disciplinary procedure	✓

A - compliant. In Moldova, the Law on Prosecution Service stipulates grounds for disciplinary liability. Its Chapter VII, Section 2 (Disciplinary liability) defines what constitutes disciplinary violations which result in disciplinary liability. Dismissal is one of the disciplinary sanctions under Art. 39 of the Law on Prosecution Service. Dismissal is also one of the two conditions for termination of service of prosecutor under Article 56 of the Law on Prosecution Service. List of grounds for dismissal is stipulated in Article 58 of the Law on Prosecution Service.

B – non-compliant. The list of grounds for dismissal appears to be exhaustive and unambiguous. However, several grounds for disciplinary liability appear to be excessively broad allowing for unlimited discretion of the decision-making body. One such ground is contained in Art. 38 (a) stipulating that "improper performance of official duties" results in disciplinary liability. What constitutes "improper performance of official duties" is not further broken down into more specific grounds in the legislation, as required by the benchmark. The prosecutors met during the on-site, agreed that this ground was too general and informed that the Superior Council of Prosecutors had the same concern and alerted the Ministry of Justice, which they believed was working on the draft legislation to address this shortcoming.

Another ground that is not line with the benchmark is contained in Art. 38 (f) - "undignified attitude, manifestations or way of life which are prejudicial to the honour, integrity, professional probity, prestige of the Prosecutor's Office or which violate the Code of Ethics of Prosecutors". The monitoring team finds this ground to be vague and open to interpretation. The authorities noted that this too is addressed in the draft legislation prepared by the Ministry of Justice. Finally, the monitoring team found the ground under Art. 38 (b) to be excessive as it states that "failure to apply or incorrect application of the law, unless justified by a change in the practice of applying the rules laid down in the legal system" shall constitute a disciplinary violation. The norm does not specify the scope of failure, or its gravity. In principle, the simplest disregard of a procedural provision may automatically trigger disciplinary proceedings.

C – compliant. The Law on Prosecution Service regulates the main steps of the disciplinary procedure and the timeframes. The disciplinary action can be initiated on the receipt of notification concerning facts which may constitute disciplinary offence. The law defines who can submit such notification, its form and content. The notification is submitted to the Secretariat of the Superior Council of Prosecutors which registers them and forwards to Inspection of Prosecutors first for preliminary verification and subsequent verification. After verification the Inspector issues a decision on termination of disciplinary proceedings or transmission of materials to the Board of Discipline and Ethics, or – in particular cases – to the Ministry of Justice. The Board of Discipline and Ethics examines and decides on the disciplinary case. The role and the rights of the prosecutor in questions are also stipulated in the law.

Benchmark 7.2.4.

	Compliance
The disciplinary investigation of allegations against prosecutors is separated from the decision-making in such cases	✓

Compliant. In Moldova, disciplinary investigation of allegations against prosecutors are investigated by inspectors of the Inspection of Prosecutors who carry out the investigation, prepare the disciplinary case and present it to the disciplinary body but do not take part in the deliberations or sanctioning. The case is examined by another entity – the Board of Discipline and Ethics.

Indicator 7.3. The budget of the public prosecution service, remuneration and performance evaluation of prosecutors guarantee their autonomy and independence

Assessment of compliance

Benchmark 7.3.1.

The budgetary funding allocated to the prosecution service:

Element	Compliance
A. Was not less than 90% of the amount requested by the prosecution service or, if less than 90%, is considered sufficient by the prosecution service	✓
B. Included participation of representatives of the prosecution service in consideration of its budget in the parliament or the parliament's committee responsible for the budget, if requested by the prosecution service	✓

A – compliant. In 2022, General Prosecutor's Office (GPO) requested financial resources in the amount of 385,379,000 MDL and, by the end of 2022, it was allocated a total of 394 021 500 MDL, which constituted more than 100%.

B – compliant. Representatives of the prosecution service do not directly participate in the consideration of budget in parliament or the parliament's committee responsible for budget. Annually the GPO sends its calculations on the needs and costs of the prosecution service to the Ministry of Justice and then this is sent to the Ministry of Finance. The Ministry of Finance examines this request and comes back to the GPO

with questions and they debate the disagreements on the proposal. At the on-site visit, representatives of the prosecution service shared that it would be useful to provide the right to participate in the consideration of the budget in the parliament or the parliament committee responsible for budget. However, the prosecution service has never made such a request.

Benchmark 7.3.2.

The law protects the level of remuneration of prosecutors and limits discretion:

Element	Compliance
A. The law stipulates guarantees protecting the level of remuneration of prosecutors (70%) OR The level of remuneration is stipulated in the law (100%)	100%
B. If there are additional discretionary payments, they are assigned based on clear criteria	✓

A – compliant (100%). In Moldova, until 1 December 2018, the level of remuneration of prosecutors was stipulated in a stand-alone law - the Law on the Remuneration of Judges and Prosecutors. This law was repealed and currently the Law on the Unitary Pay System in the Budgetary Sector stipulates the level of remuneration for prosecutors and links it to the social standards adopted in the country (reference value established annually by Parliament in the annual budget law).

B – compliant. In Moldova, additional payments that existed for prosecutors did not qualify as discretionary payments. The same benefits additional to the basic remuneration, are provided to all prosecutors regularly at a fixed rate, apart from those prosecutors who have been disciplinary sanctioned. Moldova was compliant with this element of the benchmark.

While Moldova is compliant under both elements of this benchmark, the issue of prosecutorial remuneration is of concern. The monitoring team extensively discussed this issue with prosecutors and judges and found the concerns they raised reasonable. First, the salaries for prosecutors were capped in 2018 as the reference value has been capped and the salaries have not changed since then. Unlike other civil service professions, prosecutors do not benefit from bonuses for performance and cannot be compensated for overtime – which has been used to increase salaries for other civil servants. The prosecutors have also lost special state aid options. According to the information provided by Moldovan authorities, in 2022 – a first-time prosecutor had a gross monthly salary of approximate equivalent of 945 EUR. Under the previous law no longer in force, the salary would have been at the approximate equivalent of 1385 EUR – a substantial difference. Second, a percentage increase for exercise of management positions (from 7 to 20%) that existed under the previous legislation was replaced with setting a small difference in salaries between the various levels of seniority and management positions vs. non-management. For example, according to the data provided by authorities, salary level of the prosecutor of the GPO with more than 16 years of experience was approximately only 370 euros higher than that of the first-time prosecutor in the territorial office with less than 6 years of experience. The difference between the salary of the PG and of the regular prosecutor of the GPO is approximately 350 euros. The monitoring team believes that the legislative changes of the regulation of the prosecutorial remuneration had a negative effect on the profession by considerably lowering the level of actual salaries, exposing prosecutors to higher corruption risks, making profession less attractive for young law graduates, and decreasing motivation for upward movement within the profession. Moldova needs to review and address this issue.

Benchmark 7.3.3.

Performance evaluation of prosecutors is carried out by:

Element	Compliance
A. Prosecutorial bodies (70%)	B (100%)
B. Prosecutorial Council or another prosecutorial governance body (100%)	

B – compliant (100%). In Moldova, prosecutor's performance is evaluated in the form of the periodical assessment (every four years) and extraordinary assessment (at the request of the prosecutor in question, if he or she take part in the competition for the position of the Chief Prosecutor, and if he or she received qualification "insufficient"). Both types of assessment are carried out by the Prosecutors' Performance Evaluation Board subordinated to the Superior Council of Prosecutors. The Board analyses and assesses the files of the prosecutors subject to evaluation, organises and conducts interviews with prosecutors under evaluation (these two actions constitute the procedure of evaluation) and adopt decisions on the performance evaluation of the prosecutor undergoing evaluation.

The Prosecutor's Performance Evaluation Board is a sub-body of the Superior Council of Prosecutors, which under this monitoring qualifies as one of "prosecutorial governance bodies" in Moldova (please, see further details under Benchmark 4.1).

Indicator 7.4. The status, composition, functions, and operation of the Prosecutorial Council guarantee the independence of the public prosecution service

Background

In Moldova, the Superior Council of Prosecutors qualifies as the prosecutorial governance body according to the definition of this monitoring. Three of its subsidiary bodies also qualify as prosecutorial governance bodies and will be evaluated under this indicator. Namely – the Board (College) for Selection and Career of Prosecutors, the Prosecutors' Performance Evaluation Board, and the Board (College) of Discipline and Ethics.

In 2023, significant changes took place in the prosecutorial governance bodies of Moldova, changing the composition of the Superior Council of Prosecutors and its subsidiary bodies. In addition, the mandates of the two mentioned-above boards, namely, the Board (College) for Selection and Career of Prosecutors and the Prosecutors' Performance Evaluation Board have been abrogated. A new Board (College) for Selection and Evaluation of Prosecutors is to carry out their functions once its members are selected by the Superior Council of Prosecutors and General Assembly of Prosecutors. Therefore, in 2023 there is now two Boards: the new Board for Selection and Evaluation of Prosecutors and the Board of Discipline and Ethics. Evaluation below takes note of these changes; however, it focuses on status quo as of end of 2022.

Assessment of compliance

Benchmark 7.4.1.

	Compliance
The Prosecutorial Council and other prosecutorial governance bodies function based on the Constitution and/or law that defines their powers	✓

According to the monitoring methodology, if a country has more than one prosecutorial governance body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.

Compliant. In Moldova, the Superior Council of Prosecutors qualifies as the prosecutorial governance body according to the definition of this monitoring. It is set up and functions based on the Constitution (Article 125/1 – Superior Council of Prosecutors), the Law on Prosecution Service (Title III Self-governing bodies under the purpose of the Prosecution Office), which define its powers, the organisation and functioning. It is independent of the legislative and executive branches of government. The Prosecutor General is an ex-officio member of the Council and can participate in the meetings of the SCP but without the right to vote in the adoption of the Council's decisions with exception of those concerning the drafting and adopting normative acts and policy documents on the development of the Prosecution Office. The Council functions in practice.

The subsidiary bodies of the Council (the Board (College) for Selection and Career of Prosecutors, Prosecutors' Performance Evaluation Board, and the Board (College) of Discipline and Ethics) also qualify as "prosecutorial governance bodies" under this monitoring. They are set up by the Law on Prosecution Service which defines their competences, organisation and functioning (Title III Self-governing bodies under the purpose of the Prosecution Office). These bodies are independent of the legislative and executive branches of power. The Prosecutor General or his/her deputies do not chair in the respective bodies, do not appoint or dismiss their members, do not approve their decisions or play a decisive role in their decision-making in another form, as well as have no authority to supervise or control their operation. These bodies function in practice.

Benchmark 7.4.2.

The majority of the Prosecutorial Council and other prosecutorial governance bodies is composed of prosecutors who:

Element	Compliance
A. Are elected by their peers	X
B. Represent all levels of the public prosecution service	X

A-B – non-compliant. In Moldova, the Superior Council of Prosecutors consists of 13 members: the President of the Superior Council of Magistracy ex officio (including interim); the Minister of Justice (including interim)' the People's Advocate; the Prosecutor General; five members elected by the General Assembly of Prosecutors from among the prosecutors in office, by secret, direct and free vote (one from among the prosecutors of the Office of the Prosecutor General, and four - from among the prosecutors of the territorial and specialised prosecutors' offices); and four members elected from civil society. Five

prosecutorial members of the SPC who are elected by their peers do not represent the majority; the Prosecutor General is not counted as he is not elected to the SCP by peers.

The other three bodies (the Board for Selection and Career of Prosecutors, the Prosecutors' Performance Evaluation Board, and the Board of Discipline and Ethics) each comprise seven members of whom five are elected by the General Assembly of Prosecutors from among the prosecutors and the other two members are elected by the SCP from among representatives of civil society.

The monitoring team regretfully notes that with legislative changes which took place in 2023, the number of members composing the two subsidiary bodies of the SPC, who are prosecutors elected by the General Assembly of Prosecutors from among the prosecutors has been reduced from five to two.

Benchmark 7.4.3.

	Compliance
The composition of the Prosecutorial Council and other prosecutorial governance bodies includes at least 1/3 of non-prosecutorial members with voting rights who represent non-governmental stakeholders (e.g., civil society, academia, law professors, attorneys, human rights defenders)	x

Non-compliant. Four from 13 members of the Superior Council of Prosecutors are representatives of civil society and two from seven members of in each of other prosecutorial governance bodies (the Board for Selection and Career of Prosecutors, the Prosecutors' Performance Evaluation Board, and the Board of Discipline and Ethics) are representatives of civil society. In all these cases, such a representation does not constitute at least 1/3 of members in any of these bodies.

As noted above, in 2023, the non-governmental stakeholder's composition of all these bodies has changed, providing them with higher representation. The monitoring team notes this positive development but will be able to evaluate it only in the next monitoring report.

Benchmark 7.4.4.

The decisions of the Prosecutorial Council and other prosecutorial governance bodies:

Element	Compliance
A. Are published online	✓
B. Include an explanation of the reasons for taking a specific decision	✓

A-B – compliant. The Law on Prosecution Service (Art. 77) requires that decisions of the Prosecutorial Council (SCP) are motivated, signed and published on the official website of the SCP within 10 days of their issuance. The same Law (Art. 85) requires that the decisions of the SCP's three sub-bodies are also motivated, signed and published on the official website of the Council. The decisions regarding evaluations of prosecutors are not published but results of the evaluation are made public.

In 2022, the SCP adopted 282 decisions, all of which were published and can be found here. The College for the Selection and Career of Prosecutors adopted and published 140 decisions, which can be found here; the College for the Evaluation of Prosecutors' Performance adopted and published 0 decisions; and the College of Discipline and Ethics adopted and published 158 decisions, which can be found here.

According to Moldovan authorities, these represent all decisions of SCP and of all three boards taken in 2022, except for approximately one percent of decisions on disciplinary matters. The authorities explained that due to the workload, the SCP had a backlog regarding the publication of decisions in disciplinary matters, as the personal data had to be taken out manually, which took time.

The examples provided by authorities included the explanation of the reasons for taking the decisions. The monitoring team believes that the facts were described in detail, with some data censored, such as: numbers, dates, names, addresses. The latest decision found on the official website of the SCP was from 16 December 2022.

Benchmark 7.4.5.

The Prosecutorial Council or other prosecutorial governance bodies play an important role in the appointment of prosecutors:

Element	Compliance
A. The Prosecutorial Council or another prosecutorial governance body directly appoints prosecutors. The role of the Prosecutor General (if involved at all) is limited to endorsing the Council's decision without the possibility of rejecting it (100%) OR	C (50%)
B. The Prosecutorial Council or another prosecutorial governance body prepares a proposal on the appointment of a prosecutor that is submitted to the Prosecutor General, that may reject it only in exceptional cases on clear grounds explained in the decision (70%) OR	
C. The Prosecutorial Council or another prosecutorial governance body reviews all candidates for the position of a prosecutor and makes a justified recommendation to the relevant decision-making body or official (50%)	

C – compliant (50%). In Moldova, the Prosecutor General appoints prosecutors upon proposal from the Superior Council of Prosecutors. According to Regulations of the Superior Council of Prosecutors, the PG may reject the proposal within five working days if he/she finds the candidate is incompatible with the position of the prosecutor. In such a case, the PG must provide the SCP and the candidate in question with the copy of the act issued and the documents confirming circumstances of incompatibility. Having received such a rejection, the Council instructs the Inspectorate of Prosecutors to verify the circumstances, and, if it finds them unfounded, the Council may confirm its proposal by the vote of at least 2/3 of its members. In this case, the proposal becomes binding on the Prosecutor General.

The described procedure would make Moldova compliant with Element B of the Benchmark. However, procedure for appointment of the Chief of the Prosecution Office of ATU Gagauzia, regulated by Law on Prosecution Service (Art. 26), is different. Namely, the candidate for this position is selected by the People's Assembly of Gagauzia according to the regulations adopted by the SCP. The public competition is organised and carried out according with the procedure established by the local law of People's Assembly of Gagauzia. Then the People's Assembly of Gagauzia proposes the selected candidate for verification to the Superior Council of Prosecutors, which verifies that the candidate meets the eligibility criteria and that the selection procedure was observed and proposes the candidate for appointment to the Prosecutor General. Appointment procedure for this position therefore downgrades Moldova to compliance with element C of this benchmark.

Benchmark 7.4.6.

The Prosecutorial Council or other prosecutorial governance bodies play an important role in the discipline of prosecutors:

	Element	Compliance
A.	The Prosecutorial Council or another prosecutorial governance body directly applies disciplinary measures or proposes disciplinary measures to the relevant decision-making official that can be rejected only in exceptional cases on clear grounds explained in the decision	✓
B.	If the Prosecutor General is a member of the Prosecutorial Council or other prosecutorial governance bodies dealing with disciplinary proceedings, he or she does not participate in decision-making on the discipline of individual prosecutors	✓

A – compliant. In Moldova, the Board (College) of Discipline and Ethics apply disciplinary measures directly. The Superior Council of Prosecutors reviews the appeals to the decisions of the Board (College) of Discipline and Ethics within one month and either upholds the contested decision of the Board or adopts a new decision resolving the case. This too is done directly. Moldova complies with element A of this benchmark.

B – compliant. In Moldova, Prosecutor General is an ex-officio member of the Superior Council of Prosecutors. However, he or she does not participate in decision making on the discipline of individual prosecutors. The Prosecutor General participates in meetings of the Council without the right to vote in adoption of its decisions, except those concerning drafting and adoption of normative act and policy documents. Moldova complies with element B.

8 Specialized anti-corruption institutions

Moldova ensures specialisation of anti-corruption investigators and prosecutors. Two key institutions – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office investigate corruption, with Anti-Corruption Prosecution Office focusing on high-level corruption; it also presents corruption cases in court. In 2022, the Chief Prosecutor of Anti-Corruption Prosecution Office was selected through a transparent and merit-based procedure. The competencies of the two agencies overlap, but Moldova is addressing this issue through the reform which took place outside of the monitoring timeframe in 2023. Moldova should ensure the focus on high-level corruption through this future reform. Identification, tracing, return and management of assets is performed by specialised officials of the Criminal Asset Recovery Agency, which has been active in 2022.

Figure 8.1. Performance level for Specialized Anti-Corruption Institutions is outstanding.

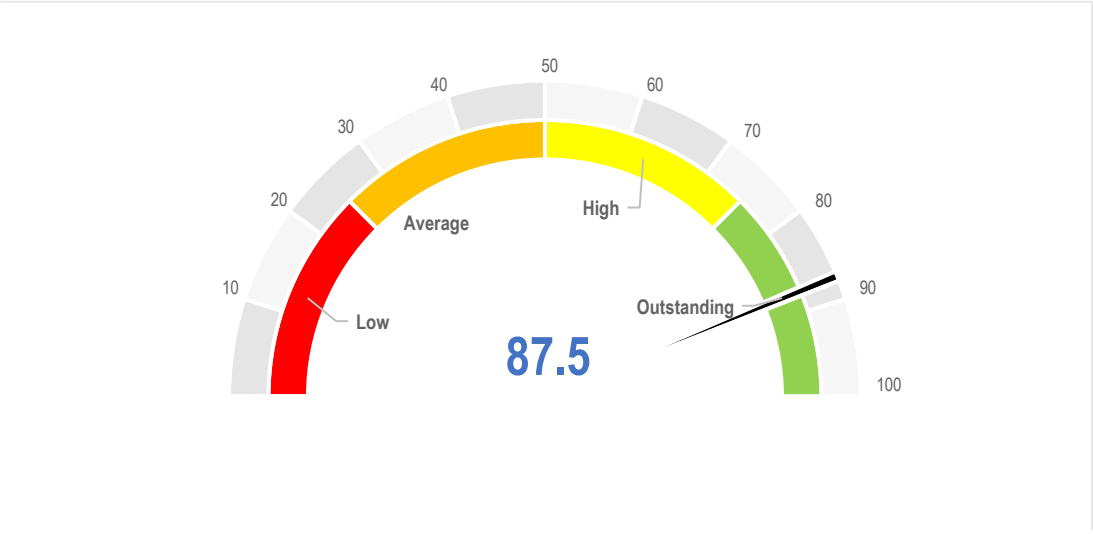
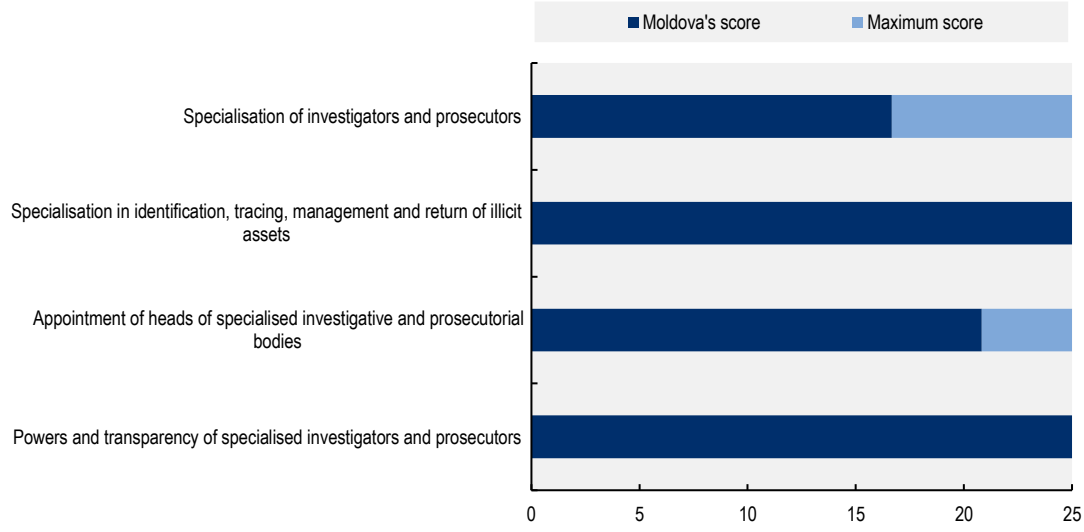


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators.



Indicator 8.1. The anti-corruption specialisation of investigators and prosecutors is ensured

Background

Recent amendments to the Criminal Procedure Code, adopted on 14 April 2023, changed the jurisdiction of the law enforcement agencies over investigation and prosecution of corruption cases in Moldova. In line with the amendments, police authorities within the Ministry of Internal Affairs will investigate low-level corruption. National Anti-Corruption Centre (NAC) will investigate corruption offences committed by high-level officials, or those with the high value of the bribe or high inflicted damages. Anti-Corruption Prosecution Office (APO) will supervise NAC's investigations and will take them to trial. The law is to enter

into force on 4 August 2023. NAC and APO have three months from publication of the law to decide on cases that are no longer under their jurisdiction. Cases that, according to the latest amendments, are no longer under the jurisdiction of the APO and the NAC, must be closed, sent for investigation to other law enforcement agencies, or sent to court. This law seeks to further delineate competences between law enforcement bodies investigating corruption and provide for specialisation on high-level corruption in Moldova, allowing NAC and APO to focus on these crimes, as during the monitoring period both agencies have been overwhelmed by cases of petty corruption. It also aims to implement one of the conditionalities of the Action Plan for the implementation of the measures proposed by the European Commission in its Opinion on the application for accession of the Republic of Moldova to the EU, approved by the National Commission for European Integration on 4 August 2022, as well as the Memorandum on Economic and Financial Policies, concluded with the IMF. The new competencies will be reviewed in the next monitoring cycle, this report evaluates the status quo until 31 December 2022.

In Moldova, in 2022, two institutions had mandate and responsibility to investigate corruption offences – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office. According to Criminal Procedure Code Art. 269, NAC has the competence to carry out the criminal investigation regarding the crimes, which include active and passive bribery in public sector, trading in influence, abuse of office, illicit enrichment, passive and active bribery in the private sector, abuse of functions by a public official, misappropriation of funds, embezzlement, and money laundering, as well as those committed in connection with these crimes, with the exceptions provided by the Code. According to Criminal Procedure Code Art. 270-1, the Anticorruption Prosecutor's Office carries out investigations in most of the corruption offences, apart from illicit enrichment and money laundering, if they are perpetrated by high-level official or the bribe or damage are of high-level.

For the purposes of this monitoring, if the country has more than one body investigating corruption, including high-level corruption, the one with primary responsibility for such crimes will be reviewed. In Moldova, in 2022, before the competence of these bodies was changed in 2023, APO had responsibility for investigating most high-level corruption offences, with exception of illicit enrichment and money laundering that were investigated by NAC. APO is therefore evaluated under benchmarks 1.1-1.2 (as the specialised anti-corruption investigative body of Moldova) and 1.3 (as the specialised anti-corruption prosecution body of Moldova).

Assessment of compliance

Benchmark 8.1.1.

Investigation of corruption offences is assigned in the legislation to a body, unit or a group of investigators which specialise in combatting corruption:

	Element	Compliance
A.	There are investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (70%) OR	B (100%)
B.	There is a body or unit of investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (100%)	

A - not applicable.

B - compliant (100% of the score).

According to Criminal Procedure Code Art. 270-1, the Anticorruption Prosecutor's Office carries out investigations for a set of 19 criminal offences, if some conditions are met. The list is not identical with the

list of 19 offences provided for NAC, but most of the corruption offences, apart from illicit enrichment and money laundering are in that list. The conditions refer to:

a) a position of the perpetrator (most of the persons, who are considered to be high-level officials under this monitoring are included in this list);

b) the value of the bribe or of the damage caused by the offence exceeds a certain financial threshold (when it is high).

APO appears to have clearly established mandate and responsibility to investigate high---level corruption offences, and those related to corruption, as the main focus of its activity. Exceptions to these rules are mentioned in the Criminal Procedure Code Art. 271, which provides for a possibility to assign investigation of other categories of crimes by order of the General Prosecutor.

Benchmark 8.1.2.

Jurisdiction of the anti-corruption body, unit, or a group of investigators specified in 1.1, is protected by legislation and observed in practice:

Element	Compliance
A. The legislation does not permit corruption cases to be removed from the specialised anti-corruption body, unit, investigator, or allows it only exceptionally, based on clear grounds established in the legislation	x
B. There were no cases of transfer of proceedings outside legally established grounds	x

A - non-compliant. According to the Criminal Procedure Code Art. 270, the Prosecutor General has the authority to change the jurisdiction of any case under investigation of APO. The Code or any bylaws do not provide clear grounds for removing a case from APO's investigation. Therefore, Moldova is not compliant with this element. At the same time, during the on-site visit, the monitoring team was assured that from the beginning of 2022 there were no cases of changes in the jurisdiction in the cases of APO with which the prosecutors of the APO would not agree.

B – non-compliant. According to Moldova authorities, in 2022, there were no cases of removal or transfer of cases outside of the legally established procedure. All decisions to change the jurisdiction were made by the Prosecutor General solely at the request of the head of APO. However, as there are no clear grounds for removing the cases, Moldova cannot comply with this benchmark.

Benchmark 8.1.3.

Prosecution of corruption offences is conducted by a body, unit or a group of prosecutors which specialise in combatting corruption:

Element	Compliance
A. There is a body, unit, or a group of prosecutors with a clearly established mandate to supervise or lead the investigation of corruption cases as the main focus of activity	✓
B. There is a body, unit, or a group of prosecutors with a clearly established mandate to present corruption cases in court as the main focus of activity	✓

A – compliant. In addition to leading its own investigations into corruption (see above), according to Criminal Procedure Code Art. 270-1 (2) and Art. 9 of the Law on the Prosecutor's Office, the APO was

responsible for supervising the investigation of corruption offences which are investigated by the National Anti-Corruption Centre. Therefore, APO supervised all non-high-level corruption cases of NAC, as well as any high-level corruption cases on illicit enrichment and money laundering investigated by NAC. APO does not supervise or lead other investigations, therefore corruption and related cases constitute the main focus of its activity.

B – compliant. According to Art. 9 of the Law on the Prosecutor's Office, the Anti-corruption Prosecutor's Office is responsible for presenting corruption cases in courts of first instance, appeal and cassation courts. This is the main focus of their activity and they do not go to trial with other cases with the following exception - according to Criminal Procedure Code Art. 271, "if a person has committed two or more offenses, at least one of which is within the competence of the specialized prosecutor's office, the criminal prosecution shall be exercised by the specialized prosecutor's office."

Indicator 8.2. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Background

In 2018, Moldova established a dedicated body to deal with identification, tracing and return of corruption proceeds, as well as with the management of seized and confiscated assets in corruption cases – the Criminal Asset Recovery Agency (CARA), which is a structural department of the National Anti-Corruption Centre.

Assessment of compliance

Benchmark 8.2.1.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including from corruption (asset recovery practitioners), functions in practice	✓

Compliant. In Moldova, Criminal Asset Recovery Agency (CARA) has a mandate and responsibility to identify, trace and organise return of corruption proceeds under the Law on Criminal Asset Recovery Agency. CARA functioned in practice in 2022. In 2022, it had a staff of 35 persons, including 17 specialised officials dealing with the identification, tracing and return of criminal proceeds. CARA published annual reports on its activities. According to the authorities, in 2022, 250 requests have been made for CARA's actions, including 171 related to corruption cases. As part of the parallel financial investigations carried out by the criminal investigation officers, CARA identified and seized 630 assets with the total value of approximately 2.2billion MDL (approximately 108 million EUR).

Benchmark 8.2.2.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the management of seized and confiscated assets in criminal cases, including corruption, functions in practice	✓

Compliant. In Moldova, CARA (mentioned in in the previous benchmark) has a mandate and responsibility to organise management of seized and confiscated assets in criminal cases, including corruption, under the Law on Criminal Asset Recovery Agency. CARA functioned in practice n 2022. In 2022, nine staff members (out of 35) were specialised in the management of seized and confiscated assets. CARA publishes annual reports on its activities. In 2022, the CARA's report contained information on the number of assets in the management of CARA, the number of assets it evaluated, disposed of, and other information on its activities of asset management.

Indicator 8.3. The appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based, with their tenure in office protected by law

Background

In Moldova, in 2022, two institutions had mandate and responsibility to investigate corruption offences – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office. For the purposes of this monitoring, if the country has more than one body investigating corruption, including high-level corruption, the one with primary responsibility for such crimes will be reviewed. In Moldova, in 2022, before the competence of these bodies was changed in 2023, APO had responsibility for investigating most high-level corruption offences, with exception of illicit enrichment and money laundering that were investigated by NAC. APO is therefore evaluated under benchmarks 3.1-3.3 (as the specialised anti-corruption investigative body of Moldova) and 3.4 (as the specialised anti-corruption prosecution body of Moldova).

Assessment of compliance

Benchmark 8.3.1.

The head of the anti-corruption investigative body, unit, or group of investigators, which specialises in investigating corruption, is selected through the following selection procedure in practice:

Element	Compliance
A. The legislation regulates the main steps in the process	✓
B. The information about the outcomes of the main steps is published online	✓
C. The vacancy is advertised online	✓
D. The requirement to advertise the vacancy online is stipulated in the legislation	✓
E. Any eligible candidates could apply	✓
F. The selection is based on an assessment of candidates' merits (experience, skills, integrity) in legislation and in practice	✓

On 15 June 2022, the Chief Prosecutor of the Anti-Corruption Prosecution Office was appointed to take duties from 1 August 2022. This selection procedure is evaluated below.

A – compliant. The Law on the Prosecutor's Office (Art. 25-1) regulates the main steps of the process, including announcement of the vacancy, submission of applications, initiation of the competition by the High Council of Prosecutors, the two stages of the competition: pre-selection of candidates by a special commission established by the Superior Council of Prosecutors and selection of the candidate for the position by the Superior Council of Prosecutors from among eligible candidates, as well as rules for setting up of the special commission. Further details are provided in the Regulations approved by the Prosecutor General.

B – compliant. The law requires that information about outcomes of the main steps is published online. Such information, during the selection procedure undertaken in 2022 for the position of the APO's Chief Prosecutor, has been published on the website of the Superior Council of Prosecutors, including information regarding initiation of the contest, amendment of the Regulation on the organization and conduct of the public contest, setting up of the Special Commission for the preselection of candidates for the position, examination of the admissibility of candidates at the stage of pre-selection of candidates, results of the selection phase, and nomination of the candidate to the position of the APO's Chief Prosecutor.

C – compliant. The vacancy and information regarding initiation of the contest was published on the website of the Superior Council of Prosecutors on 4 February 2022.

D – compliant. Art. 25-1 of the Law on Prosecution Office requires that information on the opening of the competition and the pre-selection shall be published on the official website of the Superior Council of Prosecutors at least 15 days before the deadline for submission of applications.

E – compliant. Eligible candidates were provided with opportunity to apply. Eligibility requirements are provided in the Art. 25-1 of the Law on Prosecution Office, and all candidates meeting the requirements had the opportunity to apply. Initial deadline was set at 20 days (until 25 February 2022) and was further extended for another 12 days (until 9 March 2022).

F – compliant. The selection procedure undertaken in 2022 for the position of the Chief Prosecutor of APO was based on the assessment of candidates' merits (experience, skills, integrity) as required in legislation. A Special Commission (set up by the Superior Council of Prosecutors and comprising one candidate proposed by the President, one – by the Minister of Justice, and three candidates proposed by the Council itself) first verified, in a closed session, that the candidates met the eligibility criteria and invited eligible

candidates to the interviews. During the interviews, the Commission evaluated managerial and professional competences of candidates through questions and discussion of the proposed management and institutional development concepts which candidates submitted. Candidates have been also reviewed in regard to the irreproachable reputation and whether there had been any reasonable suspicion of committing acts of corruption, or related acts within the meaning of the Law on Integrity. Each member of the Special Commission had to fill out the score sheet for every candidate rating them according to the criteria and methods provided for the in the respective Regulations.

NAC is one of the specialised anti-corruption investigative bodies in Moldova. The monitoring team is concerned with the process of selection of NAC Director in 2022, including the selection procedure. In contrast, competition for selection of the Director of National Anti-Corruption Centre, through which a new Director was appointed on 13 February 2022, would not have met the above criteria. The Law on National Anti-Corruption Centre was amended in August 2021 eliminating open competition for the selection of the Director. Although, it falls outside of this monitoring in 2022, in view of changes of competences of NAC and it assuming responsibility for investigation of high-level corruption in Moldova starting from August 2023, NAC will be evaluated under this Benchmark in the next cycles of monitoring.

Benchmark 8.3.2.

The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators, which specialise in investigating corruption, is clear, transparent, and objective:

	Element	Compliance
A.	Grounds for dismissal are defined in the law	✓
B.	Grounds for dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “loss of confidence or trust” unless the legislation breaks them down into more specific grounds	✓
C.	The law regulates the main steps of the procedure	✓
D.	The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online	x

A – compliant. The chief prosecutor of APO can be dismissed before the end of the mandate on the grounds provided by the Law on Prosecution Office Art. 58.

B – compliant. Grounds for dismissal include submitting the resignation; the disciplinary sanction of release from the office; a final decision finding an incompatibility; refusal to be subject to verification on integrity of holders of public offices or not submitting an asset declaration; a final decision finding a conflict of interests, etc. The monitoring team considers these grounds clear and, if applied correctly, they should exclude political or other undue interference. The grounds also do not include such grounds as “breach of oath”, “improper performance of duties,” or “loss of confidence or trust” mentioned in the benchmark.

C – compliant. The law regulates the main steps of the dismissal procedure. For cases of resignation, the dismissal is issued by the Order of the Prosecutor General on receipt of a written resignation. The dismissal on other grounds shall be made within 5 working days from the occurrence or the knowledge of the case, also by the Order of the Prosecutor General. This is communicated to the prosecutor within 5 working days from the issuance, but prior to the date of dismissal. The order of the Prosecutor General can be challenged in court.

D - non-compliant. There is no requirement in the law to publish information about the steps or outcomes of the dismissal procedure.

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	N/A

Not applicable. Former Chief Prosecutor of the Anti-Corruption Prosecution Office was dismissed by the Prosecutor General in 2021 after being suspended from his post in 2020. There have been no dismissals in 2022.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

Element	Compliance
A. The legislation regulates the main steps in the process	✓
B. The information about the outcomes of the main steps is published online	✓
C. The vacancy is advertised online	✓
D. The requirement to advertise the vacancy online is stipulated in the legislation	✓
E. Any eligible candidates could apply	✓
F. The selection is based on the assessment of candidates' merits (experience, skills, integrity)	✓

A-F – compliant. See Benchmark 3.1.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Assessment of compliance

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

A – compliant. In Moldova, the Anti-Corruption Prosecution Office can apply covert surveillance, intercept communications, and conduct undercover investigations, however not directly. APO does not have a technical assistance unit with technical capabilities; it has to rely on the equipment and specialised staff of other bodies, including the NAC, the police and other law enforcement agencies. On the other hand, NAC has its own department providing technical assistance in the corruption investigations that carries out wiretapping, covert operations, surveillance, financial examinations, handwriting examinations, etc., and it

is this department that is mostly utilized by APO. Such an arrangement is compliant with the benchmark, although, in the opinion of the monitoring team, it is not ideal, especially, for highly sensitive high-level corruption cases as it creates a potential for information leaks.

B – compliant. According to authorities, prosecutors of APO have powers to access tax, customs, and bank data in line with provisions stipulated in the Order of the Prosecutor General on the approval of relevant regulation; in the case of bank data – the procedure is regulated by the Criminal Procedure Code and authorization from the court is required. Access to the relevant databases, covered under this element of the benchmark, is provided on the basis of a request from the General Prosecutor's Office to a Tax or Customs agency. The purpose of the access should be indicated in the application and the necessary information and services need to be listed. Moldovan authorities explained that once the prosecutor has obtained authorised access to use the databases, he or she may at any time independently access in real time any public data system, such as: Access-Web public service agency, State Tax Inspectorate database, Integrated Customs Information System, Criminal and Criminological Information Registry, Border Police, etc. While formally Moldova complies with this element of the benchmark – such authorization procedure is overly burdensome and limits APO's independence from Office of the Prosecutor General. The monitoring team was also informed that procedure of access to bank information by APO has been in the process of amending with the view to limit it to prosecutorial authorization only; this was still ongoing in 2023.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	✓
C. A number of terminated investigations with grounds for termination	✓

A-C – compliant. The Anti-Corruption Prosecution Office publishes its annual reports. Such report for 2021 and 2022 can be found online and contain the information listed in the benchmark.

Assessment of non-governmental stakeholders

Non-governmental stakeholders confirmed information shared by the National Anti-Corruption Centre and the Anti-Corruption Prosecutor's Office that in 2022 they were overloaded with cases of petty corruption. None of the institutions has a clear exclusive focus on the high-level corruption; thus, high-level corruption is not prioritised. Non-governmental stakeholders hoped that the new delineation of functions introduced in 2023 could help produce better enforcement results and the needed high-level prosecutions. Although, overall opinion was that enforcement of high-level cases has increased since 2022. Separately, and although not currently covered by this monitoring report, the non-governmental stakeholders raised concerns over the abolishment of the competitive procedure for the selection of the Director of NAC. While they expressed favourable opinions of the new Director and no concerns over his integrity or political affiliation (he comes from the civil society background and has general trust among the non-government stakeholders), a change "to a non-transparent and obscure procedure" in principle is problematic for the future selections.

9 Enforcement of Corruption Offences

Corruption offences, especially for trading in influence and active bribery have been enforced in Moldova in 2022. However, enforcement on other offences should be stepped up, including passive bribery and bribery in the private sector. Moldova is yet to commence an investigation into a foreign bribery and had no cases of money laundering with corruption as a predicate offence or cases of illicit enrichment. Special exemption from active bribery and trading in influence leaves loopholes for abuse; statute of limitation for petty forms of corruption is too short and impedes investigations. Not all statistical data on enforcement is disaggregated and published online, and its collection is fragmented among various institutions. Moldova criminalises corruption perpetrated by legal persons. However, monetary sanctions are low and there have been only two cases of legal persons held liable for corruption in 2022. This is not enough to establish consistent enforcement practice. Confiscation is applied in Moldova; however, examples were not provided for more in-depth analysis of confiscation practices. Moldova does not track enforcement of high-level corruption cases.

Figure 9.1. Performance level for Enforcement of Corruption Offences is average.

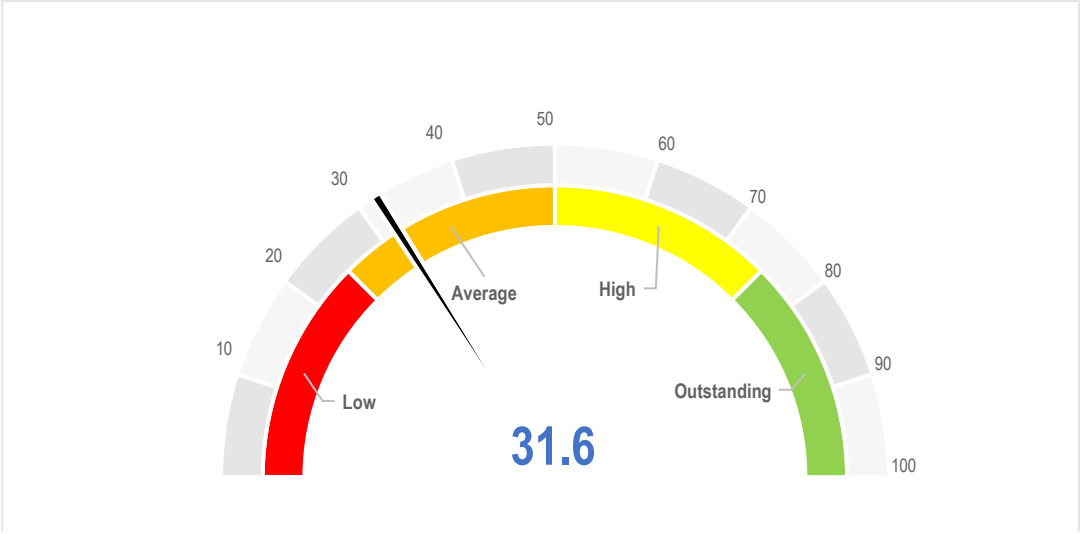
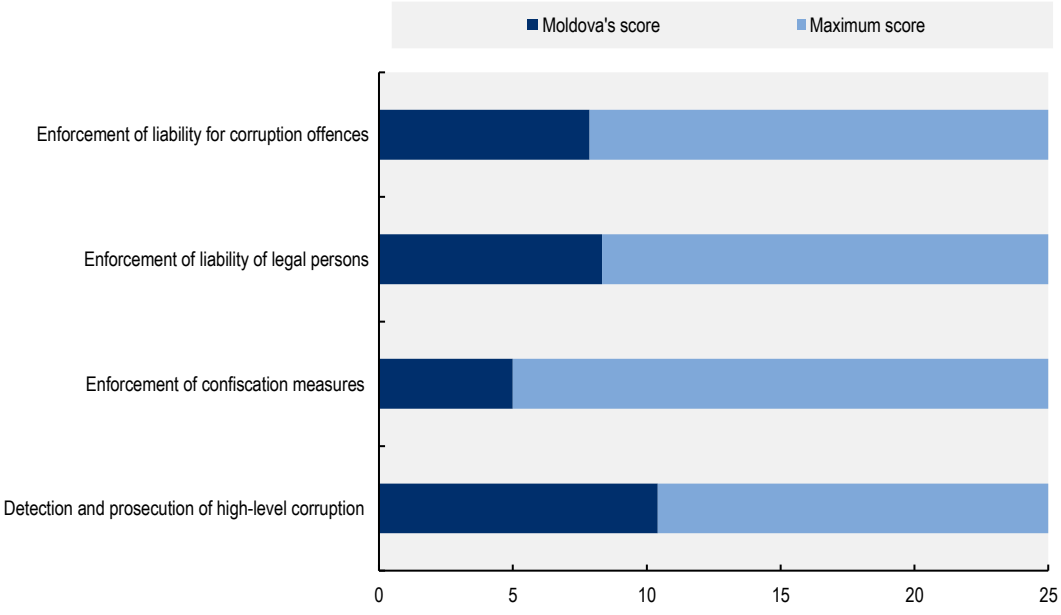


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators.



Indicator 9.1. Liability for corruption offences is enforced

Assessment of compliance

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	X
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	✓

"Routinely imposed" in this monitoring means that for each element (A-F) there were at least 3 cases of sanctions imposed for the respective offences in the monitoring period (calendar year of 2022).

Moldova does not record statistics on the first instance convictions for each element of the benchmark in a centralised manner. Statistics is kept separately by various institutions. The below information (see table) was provided by the National Anti-Corruption Centre (NAC) and Anti-Corruption Prosecution Office (APO) and represents only part of the enforcement efforts of Moldova. Statistical data on offer and promise or acceptance of a promise or offer of a bribe, as well as on non-pecuniary and intangible advantages is not kept and does not allow to assess Moldova's performance on these points.

General statistics (number of first instance convictions in 2022):

	2022 Cases investigated by APO	2022 Cases investigated by NAC under APO's supervision and cases investigated by APO
A. Number of persons convicted for active bribery in the public sector	34	100
B. Number of persons convicted for passive bribery in the public sector	12	54
C. Number of persons convicted for active bribery in the private sector	0	0
D. Number of persons convicted for passive bribery in the private sector	2	2
E. Number of persons convicted for offering or promising of a bribe as a stand-alone offence	0	0
F. Number of persons convicted for bribe solicitation or acceptance of an offer/promise of a bribe as a stand-alone offence	0	0
G. Number of persons convicted for bribery with an intangible and non-pecuniary undue advantage	0	0
H. Number of persons convicted for trading in influence	70	199

Based on the case examples provided by the authorities, the following table shows compliance with the benchmark's elements in 2022:

Element	Compliance
A. Active bribery in the public sector	Compliant
B. Passive bribery in the public sector	Compliant
C. Active or passive bribery in the private sector	Not compliant
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of a bribe as stand-alone offences	Not compliant
E. Bribery with an intangible and non-pecuniary undue advantage	Not compliant
F. Trading in influence	Compliant

The authorities provided two examples of cases with conviction for passive bribery in the private sector in 2022, which is demonstrates enforcement but still falls short of meeting “routine application” criterion of this monitoring.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	X

Non-compliant. In Moldova, illicit enrichment is punishable under Criminal Code Art. 330-2. In 2022, there were no cases of conviction for illicit enrichment in Moldova. Non-criminal confiscation of unexplained wealth of public officials (unjustified assets) is provided in Moldova by the Law on National Integrity Agency but it has not been applied in 2022.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

Non-compliant. In Moldova in 2022, there have been no officially registered investigations of giving of a bribe to a foreign public official under Criminal Code Art. 325 (active corruption).

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	X
B. Money laundering sanctioned independently of the predicate offence	X

A – non-compliant. In 2022, there were no convictions for money laundering with possible public sector corruption as a predicate offence in Moldova.

B – non-compliant. In 2022, there were no convictions for money laundering sanctioned independently of the predicate offence in Moldova.

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	✓

Compliant. For public officials convicted of acts of passive bribery, Criminal Code Art. 324 provides in all cases mandatory complementary punishment in the form of deprivation of the right to occupy certain public positions or to exercise a particular activity for a period from 5 to 7 years. The same is applicable for public officials convicted of illicit enrichment under Criminal Code Article 330(2). There is no such punishment for trading in influence (Criminal Code Art. 326) and for active bribery (Criminal Code Article 325) when such crimes are committed by public officials. However, according to Criminal Code Art.65, which states that deprivation of the right to hold certain positions or to exercise a certain activity can be applied as a complementary punishment – in most cases the public officials are usually covered in practice.

In 2022, 355 persons have been convicted for corruption offences in 2022 in the first instance in cases investigated by APO and NAC, of them 54 for passive bribery, 100 for active bribery, and 199 for trading in influence. In 2022, according to Moldovan authorities, all 54 individuals found guilty of passive bribery in the public sector have been dismissed from their positions, there were no convictions for illicit enrichment. For the crime of trading in influence 14 persons who were sentences in 2022 in the first instance have been publish officials and complimentary punishment in line with Criminal Code Art. 65 was applied to them all. For the crime of active bribery 2 public officials have been convicted in the first instance – complimentary punishment as described above was applied to one of the two, another public official was sentenced to 3 years of imprisonment, dismissing him from the office but not restricting in holding public positions in the future but that goes beyond the scope of this benchmark.

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

Element	Compliance
A. Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	X
B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	X
C. The special exemption is not allowed when bribery is initiated by the bribe-giver	X
D. The special exemption requires active co-operation with the investigation or prosecution	X
E. The special exemption is not possible for bribery of foreign public officials	X
F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	X

A-F – non-compliant. In Moldova, the Criminal Code provided for a special exemption from liability for active bribery and active trading of influence. For example, Criminal Code Art. 325 (active corruption) stipulates that "the person who promised, offered, or provided the goods or services listed in Art. 324 shall be exempt from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the offence he/she committed." The same norm is contained in Criminal Code Art. 326 (trading in influence).

Exemption is applied automatically if the elements listed in the article are met. During the on-site visit, the APO prosecutors confirmed that this wording in the law is a loophole used to avoid punishment by persons who committed active bribery or trading in influence offences. Prosecutors noted that in situations when the person under investigation becomes aware of it through a leak of information or otherwise and writes a self-incriminating report, they have to close the case against that person. There is no requirement to make the report in a particular timeframe or before the law enforcement bodies become aware of the crime on their own. Special exemption is not limited to instances when the bribe was extorted or initiated by another party. There is no requirement for active cooperation with investigation or prosecution. The exemption can be applied to all active bribery cases, including bribery of foreign public officials. During the investigation, the prosecutor has the authority to make the decision to close such a criminal case. In this case, the law does not have a direct mechanism of judicial control, but the prosecutor`s decision may be subject of consideration during the court hearing on charges of a person whose actions were exposed by the person who wrote, a self-incriminating report. This does not qualify as judicial control over the application of this norm.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	X
B. The expiration of time limits for investigation or prosecution	✓

A – non-compliant. According to Criminal Code Art.16, most corruption offences fall within the classification of grave or particularly grave offences, as they constitute acts for which criminal law provides for a

maximum punishment by imprisonment between 6 and 15 years. This sets statute of limitation of 15 years for serious offences and 20 for extremely serious offences. The statute of limitations is calculated from the day when the crime is committed until the date of the final decision of the court. However, active trading in influence (Criminal Code Art. 326 paragraph 1-1) qualifies as crime of medium gravity, for which statute of limitation constitutes 5 years. Passive corruption in the small amounts (Criminal Code Art. 324, paragraph 1) qualifies as minor crime – with statute of limitation of 2 years.

In 2022, Moldova had 10 cases of corruption of public officials terminated because of the expiration of the statute of limitation, 8 of these cases have been on passive bribery in small amounts. The prosecutors of APO confirmed that the limitation period for such offences is too short and represents an obstacle to effective investigation and prosecution in the cases provided in Criminal Code Art. 324(petty passive corruption), which has a statute of limitation of 2 years.

B – compliant. According to the provisions of CPC Art. 259, the criminal investigation shall be carried out within a reasonable time. The criminal investigation deadline set by the prosecutor is mandatory for the criminal investigation officer and may be extended at the investigator's request. According to the authorities, no corruption cases were terminated in 2022 because of the expiration of the time limit for investigation or prosecution.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	✓
D. Types of punishments applied	✓
E. Confiscation measures applied	✓
F. Types and levels of officials sanctioned	X

Elements A, B, C, D, E – compliant. Element F – non-compliant. Enforcement statistics on corruption offences is collected by different authorities depending on their involvement in the enforcement process, including by the Agency for Court Administration, Anti-Corruption Prosecution Office, and National Anti-Corruption Centre.

In 2022, information on elements B, C and D has been published for all corruption offences quarterly and annually by the Agency for Court Administration and can be found here. In 2022, National Anti-Corruption Centre published their annual report, which provided the number of cases opened by the Centre (element A). Annual report containing such statistics for APO for 2021 was also published, which has similar information from this office. Information required for publication under element F can also be found in the report of APO. Information under element E was not published in 2022 in Moldova.

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	X

Non-compliant. Enforcement statistics on corruption offences is not collected on the central level in Moldova. Agency for Court Administration publishes collects and publishes part of the enforcement statistics, the rest is not centralised.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Assessment of compliance

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	✓

Compliant. Moldovan law establishes criminal liability and sanctions applicable to legal persons for active bribery in the public sector (Criminal Code Art. 325), active bribery in private sector (Criminal Code Art. 334), trafficking in influence (Criminal Code Art. 326), and money laundering (Criminal Code Art. 243).

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

Non-complaint. According to the Criminal Code of Moldova, Art. 21 a legal person is criminally liable for a crime provided for by the Code and committed on behalf of or through and or in favour of the legal person, by the responsible person or due to lack of supervision by the responsible person. Art. 21 paragraph 4 states that corporate liability shall not exclude the liability of natural persons for the crimes committed, however, there are no provisions that directly point to the autonomous nature. Corporate liability is linked to certain conditions (who commits and for what interests), so it can be assumed that “a person with managerial functions” must be at least identified.

Chapter VI, Section III, of the Criminal Procedure Code of Moldova regulates criminal proceedings against legal persons and stipulates that general rules of criminal proceedings apply to legal persons with some special provisions provided in the Chapter, in particular, concerning who represents the legal person, how the territorial competence is established and what preventative measures can be applied to the legal person at the pre-trial stage. The rest of the procedures – collection of evidence, assessment of evidence, decisions taken at the end of the criminal prosecution, enforcement measures – are applied similarly to proceedings against natural persons, including application of Criminal Procedure Code Art. 279-1 on

merging and splitting of criminal cases. Moldovan authorities in their written responses opined that in the case of concurrent criminal liability of natural and legal persons, in principle, it might be possible to criminally prosecute and send to court separately a case against a legal person in instances when 1) the accused has disappeared, evading criminal prosecution or trial, or his location is not established, 2) the person who can be accused is not identified. The benchmark requires that the law provides for possibility of separate proceedings and therefore Moldova could be compliant in the procedural part only depending on interpretation confirmed by the case-law. However, in discussions during the on-site visit, the prosecutors opined that even though the corporate liability does not require a previous conviction of the natural person, and if the natural person in not identified, the criminal action might be in principle split in different legal proceedings that will each run their separate course – it is unlikely to happen in practice.

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	X

Non-compliant. In Moldova, sanctions for corporate offences include fines, which are applied as the main punishment (Criminal Code Art. 63). Criminal Code Art. 64 identifies the amount of the fine for legal entities and establishes limits in conventional units (1 conventional unit, “cu”, is 50 lei). The minimum fine for active bribery is 3.000 cu (150,000 lei or approx. 7,480 EUR) and the maximum is 18,000 cu (900,000 lei or approx. 44,882 EUR). Other corporate offences provide for similar ranges: the minimum fine for trading in influence is 3,000 cu and the maximum - 12,000 cu; 5,000 cu to 15,000 cu for active bribery in private sector; and 8,000 cu to 16,000 cu for money laundering. The sanctioning system for corporate offences links the amount of the bribe with the amount of the fine by setting higher fines for aggravated offences involving larger amounts of bribes. A better approach would be to directly link the calculation of the fine to the bribe amount or proceeds received from the corruption offence (for example, not less than X times the amount of the bribe or corruption proceeds).

There are no sentencing guidelines available for judges to determine when to impose the minimum or maximum fine (or mitigating and aggravating factors specifically applicable to legal persons). Instead, courts have to rely on Criminal Procedure Code Art. 385 and Criminal Code Art. 75, which contain the general criteria for the determination of the sanction and on Criminal Code Art. 64 para 4, which contains criteria specifically applicable to legal persons, which links fines to the amount of damage caused as well as the economic and financial condition of the legal person – leaving wide room for interpretation. There is no enforcement practice to evaluate how these sanctions apply in practice and what effect they have on individual companies committing corruption offences.

In conclusion, the monetary sanctions are not proportionate and dissuasive, the minimum fine may be significant for micro and small enterprises, while the maximum fine is not dissuasive for large companies. In addition, the Criminal Code allows maximum fines to legal persons up to 60,000 cu, but for bribery the maximum is only 18,000, which is not justified.

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	✓

Compliant. According to Criminal Code Art. 73 and 74, deprivation of the right to exercise a certain activity and liquidation are available additional sanctions. The banned activities may include the right to conclude certain transactions, to issue shares, to receive state aid, etc. During the on-site, it was also stated that the right to participate in public procurement proceedings is also covered, though not explicitly, by Criminal Code Art. 73.

Benchmark 9.2.5.

	Compliance
The legislation or official guidelines allow due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions considering the case circumstances	X

Non-compliant. Due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions is not provided for in Moldova.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	X

A-C – non-compliant. Moldova has provided examples of two cases in which monetary sanctions and non-monetary sanctions have been applied to legal persons in 2022. However, “routinely applied” in this monitoring means that for each element (A-C) there should be at least three cases of respective sanctions applied to legal persons in the monitoring period (calendar year of 2022). In 2022, there were no cases of confiscation of corruption proceeds from legal persons for corruption offences.

Indicator 9.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	✓
B. Proceeds of corruption offences	✓

A-B – compliant. In 2022, the courts of first instance, in 62 sentences, ordered the application of special confiscation of assets of both instrumentalities of corruption offences and proceeds from corruption offences. Disaggregated statistics is not collected. “Routinely applied” means that there were at least three cases of confiscation of instrumentalities (for element A) and three cases of proceeds of corruption offences (for element B) ordered by the first instance courts in 2022. Moldova provided such three case examples of each type (under Criminal Code Art. 106, paragraph 2a - confiscation of assets used or intended for the use of crime and paragraph 2b - confiscation of assets derived from the crime or other benefits obtained from the use of these assets).

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	X

Non-compliant. The authorities did not provide information on the total number of the executed confiscation orders in corruption cases in 2022, explaining that such statistics is not kept in Moldova.

Benchmark 9.3.3.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Confiscation of derivative (indirect) proceeds of corruption	X
B. Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	X
C. Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	X
D. Confiscation of mixed proceeds of corruption offences and profits therefrom	X

A-D – non-compliant. Moldova did not provide examples of cases under any of the benchmark’s elements.

Benchmark 9.3.4.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences	X
B. Extended confiscation in criminal cases	X

A-B – non-compliant. Non-conviction-based confiscation of instrumentalities and proceeds of corruption offences is not provided by law in Moldova. Extended confiscation in criminal cases is provided by law in Moldova but it was not applied in practice in 2022.

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	X

A-B – non-compliant. In 2022, there were no cases of return of corruption proceeds to Moldova from abroad, and Moldova did not send abroad any requests to confiscate corruption proceeds.

Indicator 9.4. High-level corruption is actively detected and prosecuted

Assessment of compliance

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

Non-compliant. Moldova did not provide information in regard to the punishment for high-level corruption in 2022 due to the fact that such statistics is not collected in the country. According to the monitoring methodology, if the respective data is not available, the monitoring will assume that the country is not compliant with the benchmark.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	X
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	✓
D. Does not impede the investigation and prosecution of corruption offences in any other way	X

In Moldova, immunity is provided to the President of Moldova, members of parliament, including its President, the Prime Minister, judges, and prosecutors. According to the authorities, in 2022, lifting of immunity was requested and granted regarding four members of Parliament and four judges. The compliance below is evaluated based on information provided on these eight cases. Authorities provided details for these cases. The compliance below is assessed based on information provided on all eight cases which happened in 2022.

A – non-compliant. In the case of the immunity lifted from the MPs, the process took in total from 1 to up to 7 days from the first request of the investigative body to the Prosecutor General to the day when the Parliament lifted the immunity of its members, which is swift and does not represent undue delays In the case example of the judges, the situation differs. In one case, the Superior Council of Magistracy granted the request to lift immunity in one day after receiving the first request of the investigative body to the Prosecutor General, in another case - it took more than 4 months, which in the opinion of the monitoring team viewed as delayed.

B – non-compliant. The legislation does not provide clear criteria for lifting immunity.

C – compliant. The procedure of lifting immunity of Members of Parliament is regulated in detail in the Law on Status of the Member of Parliament, the regulations of the Parliament, in addition to the Criminal Procedure Code. The procedure for lifting of immunity of judges is regulated in detail in the law on status of the Judge, and regulations of the Supreme Council of Magistracy.

D – non-compliant. According to the authorities, the immunity did not impede the investigation and prosecution of the corruption offences in the eight cases of 2022. However, despite the rather clearly defined procedure for removing immunity from deputies and four cases of MP immunity lifted, the monitoring team had some concerns, in principle, regarding the procedure for removal of immunity from MPs in Moldova. All four MPs whose immunity was swiftly removed were representatives of the opposition parties in the Parliament. The legislation provides for a possibility for this process to take up to 22 days, which could impede the effective investigation and prosecution of corruption.

In at least one case of judicial lifting of immunity, the procedure took more than 4 months, which in the opinion of the monitoring team could impeded investigation and prosecution of such a case.

In addition, the monitoring team believes that investigation and collection of evidence in cases of corruption committed by MPs may be further hindered by the requirement to notify the MP, which can result in the destruction of direct evidence. This, in turn, makes further investigative actions such as searches and seizures of documents, mobile phones, and other computer equipment pointless in relation to the MP. It recommends Moldova to address these concerns through legislative changes.

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	✓

Compliant (100% score). The monitoring team did not identify cases when a public allegation of high-level corruption was left not reviewed or investigated, or decisions not to open or to discontinue an investigation were taken and not explained to the public.

Assessment of non-governmental stakeholders

During the on-site visit, the non-governmental stakeholders shared the opinion that the high-level cases started to be investigated by the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office, and that, the prosecutors, in particular, are no longer reluctant to investigate such cases. However, the quality of the investigations is not always good, the cooperation between the two institutions needs improving, and that cases often are stalled in the courts, which either lack judges or are delayed for other reasons.

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Moldova

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The fifth round of monitoring under the Istanbul Anti-Corruption Action Plan assesses Moldova's anti-corruption practices and reforms against a set of indicators, benchmarks and elements under nine performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. The report analyses Moldova's efforts to build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement. A follow-up report evaluating Moldova's progress in these areas will follow.

Funded by
the European Union

PDF ISBN 978-92-64-84074-4

9 789264 840744

Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

OECD

Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the OECD and do not necessarily reflect the views of the European Union.

Please cite this publication as:
OECD (2024), *Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring: The Istanbul Anti-Corruption Action Plan*, OECD Publishing, Paris, https://doi.org/10.1787/9e03ebb6-en.

ISBN 978-92-64-33666-7 (PDF)

Photo credits: Cover design © Angelique Portrait Photography LTD.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

Foreword

This report was prepared in the framework of the 5th round of the Istanbul Anti-Corruption Action Plan (IAP), a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN). [1] The programme covers ten countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine, and Uzbekistan. Other countries of the region, OECD countries, international organisations and non-governmental partners participate in the implementation of the IAP as experts and donors.

The ACN introduced an indicator-based peer review for the IAP 5th round of monitoring (2023-2026). After the pilot[2] that tested the new methodology was completed, the revised IAP 5th Round of Monitoring Assessment Framework and Monitoring Guide were agreed at the ACN Steering Group in November 2022. The framework benefited from a thorough and inclusive consultative process, marking strong ownership and commitment of the participating countries.

The 5th round of monitoring was launched in January 2023 in Armenia, Azerbaijan, and Moldova with the support of the EU for Integrity Programme. Due to Russia's large-scale war of aggression against Ukraine, the ACN Steering Group decided to postpone the launch of the full 5th Round of Monitoring of Ukraine to 2024. At a later stage, however, considering important anti-corruption developments in Ukraine and its EU candidate status, in consultation with the EU and the Government of Ukraine, it was agreed to conduct a review with a reduced substantive scope in 2023, covering selected Performance Areas under of the Assessment Framework. The assessment period for this report is 2022 and first half of 2023.

The peer review team included the following peer reviewers: Mr Silviu Popa, Secretary General of the National Integrity Agency, Romania (PA 1 and 2); Mr Kees Sterk, Senior Judge, Netherlands, former president of European Network of Councils for the Judiciary (PA 5); Mr Alin Poterasu, European Public Prosecutor's Office (PAs 8 and 9) and the OECD/ACN Secretariat: Ms Rusudan Mikhelidze (team leader), Ms Oleksandra Onysko, (PAs 8 and 9), Mr Ivan Presniakov, (local expert - PAs 1 and 2), Mr Anton Marchuk, (local expert - PAs 6, 8 and 9), Ms Arianna Ingle (editorial support) and Ms Iryna Sochay (administrative support).

The National Coordinator of Ukraine in the ACN, the National Agency for Corruption Prevention (NACP) was first represented by Mr Andrii Vyshnevksyi, and replaced by Mr Iaroslav Liubchenko, both as Deputy Heads of NACP. The review was launched in March 2023. Ukraine provided replies to the questionnaire with supporting materials in May 2023. The virtual on-site visit to Ukraine took place on 17-21 July 2023 and included sessions with governmental and non-governmental representatives. In addition, non-governmental organisations and international partners provided replies to the monitoring questionnaire and commented on the draft report. Following bilateral consultations, this report was presented and discussed by OECD/ACN plenary meeting on 3 October 2023.

1 https://www.oecd.org/corruption/acn/istanbul-action-plan.htm

2 Pilot report on Ukraine, hereinafter referred to as "pilot" : OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris, https://doi.org/10.1787/b1901b8c-en.

Table of contents

FIGURES

TABLES

BOXES

Acronyms

ACN	Anti-corruption network for Eastern Europe and Central Asia
ARMA	Asset Recovery and Management Agency of Ukraine
CC	Criminal Code of Ukraine
CCU	Constitutional Court of Ukraine
CPC	Criminal Procedure Code
CPL	Corruption Prevention Law
EUACI	European Union Anti-Corruption Initiative in Ukraine
GRECO	Council of Europe Group of States against Corruption
HACC	High Anti-Corruption Court of Ukraine
HCJ	High Council of Justice of Ukraine
HQCJ	High Qualification Commission of Judges
IT	Information technologies
LAC	Logical and Arithmetical Control (of asset declarations)
LJSJ	Law on the Judiciary and the Status of Judges
MOJ	Ministry of Justice of Ukraine
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency for Corruption Prevention of Ukraine
OECD	Organisation for Economic Co-operation and Development
PA	Performance Area
PEPs	Politically Exposed Persons
PIC	Public Integrity Council
PCIE	Public Council of International Experts
PGO	Prosecutor's General Office of Ukraine
PSL	Prosecution Service Law of Ukraine
SAPO	Specialised Anti-Corruption Prosecutor's Office of Ukraine
SBI	State Bureau of Investigation
SJA	State Judicial Administration
SFMS	State Financial Monitoring Service of Ukraine
SOE	State-owned enterprise
SSU	State Security Service of Ukraine
TI	Transparency International
UAH	Ukrainian Hryvnia
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
Verkhovna Rada	The Parliament of Ukraine

Methodology

The IAP 5th round of monitoring uses an indicator-based methodology to ensure higher objectivity, consistency, and transparency of peer reviews. The normative framework for assessment derives from international standards and good practices based on a stocktake of the previous rounds of IAP monitoring highlighting achievements and challenges in the region.[3] Indicators evaluate anti-corruption policy, prevention of corruption, and criminal liability for corruption, with a focus on practical application and enforcement, particularly at high-level. [4]

The IAP 5th round of monitoring assessment framework includes nine Performance Areas (PAs),[5] with four indicators each and a set of benchmarks under each indicator. Benchmarks are further split into elements to ensure granularity of the assessments and recognition of progress.

Maximum possible score for a Performance Area is 100 points. Indicators under each Performance Area have an equal weight (25 points each). Benchmarks also have an equal weight within an indicator. The exact maximum weight of a benchmark depends on the overall number of benchmarks included in the indicator (i.e., the total weight of the indicator divided by the total number of benchmarks within that indicator).

Each benchmark and its elements (numbered as ''A'', ''B'', ''C'', ''D'' …) are scored individually by three different scoring methods.[6] The performance level for each Performance Area is determined by aggregating scores of all benchmarks within the respective Performance Area according to the below scale (Table 1). Scores of performance areas are not aggregated.

In case of Ukraine, out of 9 Performance Areas (PA) of the 5th Round of Monitoring Assessment Framework four Performance Areas (PAs 1, 6, 8 and 9) have been assessed fully, and one Performance Area (PA 2) has been assessed partly (indicators 3-4).

Table 1. Performance level

PERFORMANCE LEVEL	A OUTSTANDING	B HIGH	C AVERAGE	D LOW
SCORE	76-100	51-75	26-50	<25

[3] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia

[4] The IAP 5th Round of Monitoring Assessment Framework and Guide.

[5] Performance Area 1: Anti-Corruption Policy; Performance Area 2: Conflict of Interests and Asset Declarations; Performance Area 3: Protection of Whistleblowers; Performance Area 4: Business Integrity; Performance Area 5: Integrity in Public Procurement; Performance Area 6: Independence of Judiciary; Performance Area 7: Independence of Prosecution Service; Performance Area 8: Specialised Anti-Corruption Institutions; Performance Area 9: Enforcement of Corruption Offences.

[6] For more information, see IAP 5th Round of Monitoring Assessment Framework.

Executive summary

Ukraine's **Anti-corruption Strategy and Action Plan** (PA 1) are high quality, evidence-based policy documents, developed through an inclusive and transparent process. However, the anti-corruption policy does not fully consider the newly emerged risks stemming from Russia's large-scale war of aggression against Ukraine. Due to the significant delays of its adoption, the implementation, coordination and monitoring of anti-corruption policy could not be launched until spring 2023. The National Agency for Corruption Prevention (NACP) has a dedicated unit for coordination and monitoring. It also launched an IT system for monitoring the implementation of anti-corruption policy, and a coordination mechanism is being set up. However, the lack of sufficient staff and budgetary resources may impede the implementation. Ukraine is encouraged to secure resources and advance on the implementation of its ambitious anti-corruption policy.

Asset declarations system (PA 2) is advanced, highly transparent and digitized, it applies to a broad category of public officials, and has a wide scope. Asset declarations, including verification and public access have been put on hold during the Martial Law due to Russia's war against Ukraine. Many public officials submitted declarations in the assessment period voluntarily, nevertheless. Ukraine must reinstate asset declarations, thus upholding principles of transparency and accountability, and preventing rolling back of the achievements of its robust system. A risk-based verification of declarations is in place, primarily focused on high-level officials. The NACP has powers to access registers and databases, and the resources to conduct verifications, but the track record of sanctions for violations is relatively low and overall, the effectiveness of the end-to-end process of the complex and multi-phased verification framework, is questionable. Ukraine is encouraged to ensure an unhindered risk-based verification of declarations with a focus on high-level officials. The verification process must be streamlined in line with the law, avoid overlaps and ensure coordination and cooperation within the NACP, and with other relevant agencies. Transparency of verification and its results must be ensured to rebuild public trust in the verification of asset declarations in Ukraine.

In Ukraine, **judicial governance bodies** (PA 6) are responsible for selection, appointment, and dismissal of judges but they were not fully operational in the reporting period, therefore, selections, promotions and disciplinary proceedings have been put on hold. The continued status quo of numerous vacancies in the judiciary raises concerns for access to justice. Judicial governance bodies have been formed through a competitive selection and appointment process and have been operating largely transparently. Ukraine is urged to complete its legal and institutional framework to start merit-based judicial appointments as soon as possible, without compromising their quality. Judges elect court presidents, but the process is not competitive, or merit based. Undue influence of court presidents over judges, and some important decisions, as well as manipulations to hold these positions for more than two terms, have persisted, but the representatives of judicial governance bodies demonstrated the intolerance to these malpractices and shared the plans to address them. The budget of the judiciary appears insufficient, but the remuneration of judges is set in the law and excludes discretionary payments. In Ukraine, grounds for disciplinary proceedings lack clarity, and decisions have not been substantiated in the past. The reform separated disciplinary investigation from decision-making, introducing a new mechanism of disciplinary inspectors,

but the framework is not operational yet, and there is a backlog of some 11 000 disciplinary complaints against judges.

In Ukraine, **specialisation of investigation and prosecution** (PA 8) of high-level corruption is ensured through anti-corruption investigative and prosecutorial bodies NABU and SAPO. The previously widespread undue interference in the functioning of these bodies has substantially diminished in the assessment period. While the new status of NABU does not seem to impede its functioning, SAPO should benefit from an increased institutional independence from the Prosecutor General's Office. ARMA the **specialised stand-alone body** for identification, tracing, management and return of illicit assets has demonstrated some results, except in the asset recovery field. ARMA should ensure transparency, accountability, and due process to increase its credibility and build public trust in its work. The appointment of the heads of NABU and SAPO was transparent and merit-based, and their tenure was protected in the assessment period. The Head of SAPO was appointed at last after a long, obstructed process. Meanwhile the operations of NABU and SAPO suffered, as key decisions in high-level corruption cases had been left at the discretion of the Prosecutor General. Given the past repeated attempts to dismiss the NABU Director, closing legislative gaps in the dismissal grounds and procedures is important along with other measures to prevent such attempts in future. NABU has a direct access to tax and customs databases, but it cannot perform independent wiretapping and the access to bank data remains challenging in practice. Statistics on the work of law specialised enforcement bodies are collected and published but would benefit from further disaggregation.

The specialised anti-corruption bodies demonstrated a remarkable level of **enforcement of high-level corruption cases** (PA 9) with the number of convictions growing despite the war. In the assessment period, the NABU, SAPO and HACC have boosted the fight against corruption, with some prominent cases concluded and more ongoing during the on-site visit. Ukraine demonstrated the routine sanctioning of most corruption offences, confiscation of unexplained wealth, and a universal practice of dismissal of officials convicted for corruption. Still, the investigation of money laundering cases have been rare, and there have been no investigations of foreign bribery. The statute of limitations and time limits for pre-trial investigation continue to impede the enforcement of corruption cases. Enforcement statistics are collected and published but not in a centralised way. Statistics on execution of confiscation orders in corruption cases are not collected. Some types of confiscation are rarely enforced, or not enforced at all. There have been no successful cases of asset recovery from abroad. Corporate liability exists on paper (quasi-criminal model), but it has not been put in operation. The main deficiencies of the model are a non-autonomous nature of the liability linked to the prosecution of an individual perpetrator, the insufficiently dissuasive sanctions, and the lack of a due diligence defence that promotes corporate compliance measures. Ukraine recently became a Participant to the OECD Working Group on Bribery and embarked on a reform to align its legislation and practices with the provision of the OECD Anti-Bribery Convention.

Table 2 shows Ukraine's performance levels for all evaluated areas and the total number of points in each performance area.

Table 2. Performance level and scores of Ukraine by Performance Area

Performance Area	Performance Level	Score
PA-1 Anti-Corruption Policy	High (B)	53
PA-2 Asset Disclosure	Outstanding (A)	78.3*
PA-6 Independence of Judiciary	High (B)	57.4
PA-8 Specialised Anti-Corruption Institutions	Outstanding (A)	78.6
PA-9 Enforcement of Corruption Offences	Average (C)	34.2

** Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). The figure for PA 2 is a percentage value for asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50.*

Figure 1. Anti-Corruption Performance of Ukraine by Performance Area

Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). The figure for PA 2 is a percentage value for asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50.

1 Anti-corruption policy

Ukraine's Anti-corruption Strategy and Action Plan are high quality, evidence-based policy documents, developed through an inclusive and transparent process. However, the anti-corruption policy does not fully consider the newly emerged risks stemming from Russia's war of aggression against Ukraine. Due to the significant delays of its adoption, the implementation, coordination and monitoring of anti-corruption policy could not be launched until spring 2023. NACP has a dedicated unit for coordination and monitoring. It also launched an IT system for monitoring the implementation of anti-corruption policy, and a coordination mechanism is being set up. However, the lack of sufficient staff and budgetary resources may impede the policy implementation. Ukraine is encouraged to secure resources and advance on the implementation of its ambitious anti-corruption policy.

Figure 1.1. Performance level for Anti-Corruption Policy is high

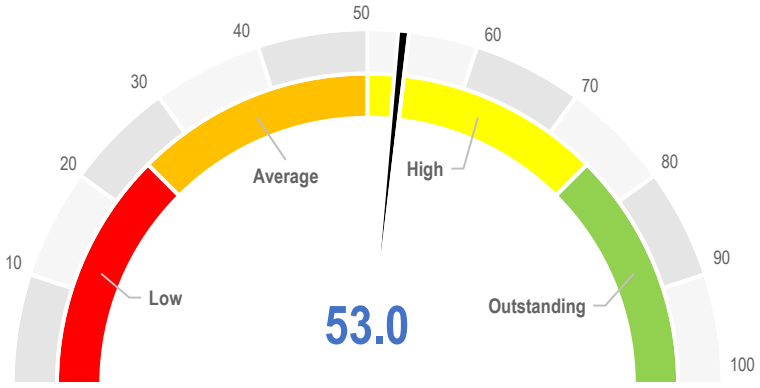
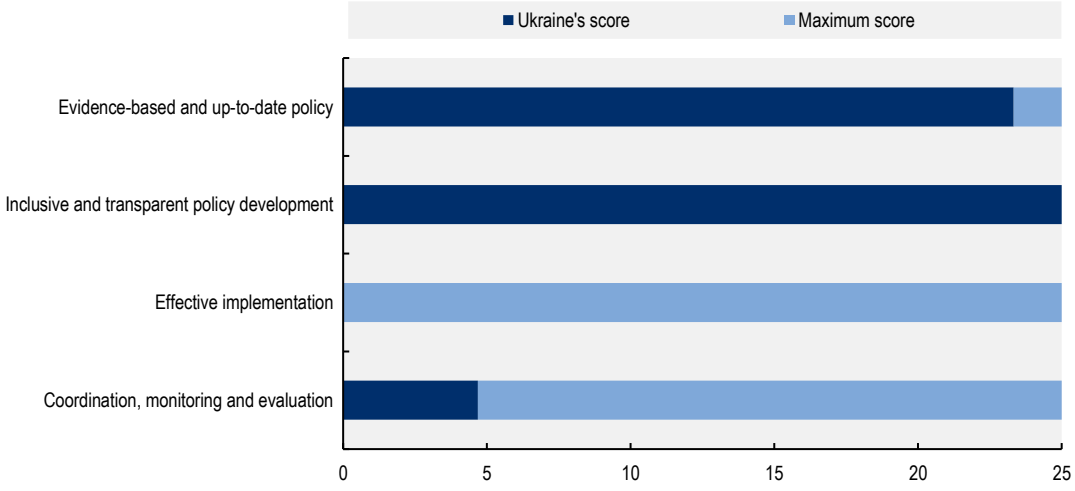


Figure 1.2. Performance level for Anti-Corruption Policy by indicators



Indicator 1.1. The anti-corruption policy is evidence-based and up-to-date

Background

The previous anti-corruption strategy and action plan expired in 2017, leaving Ukraine without a dedicated anti-corruption policy document for over four years. In 2020, a new management team took charge of the National Agency on Corruption Prevention (NACP), the government body responsible for anti-corruption policy development, coordination, monitoring, and evaluation. The agency developed an anti-corruption strategy and submitted it to the Verkhovna Rada of Ukraine (Parliament) for approval in autumn 2020.[7] In November 2020, the Parliament approved the Anti-Corruption Strategy for 2021-2025 (Strategy) in the first reading, however its second reading and adoption were delayed until June 2022.[8] NACP also prepared a

7 The Law on Corruption Prevention (CPL) provides that a Strategy should be passed as a law by the Parliament.

8 The Law of Ukraine "On the Principles of State Anti-Corruption Policy for 2021-2025" No. 2322-IX,

State Anti-Corruption Programme for 2023-2025 to support the implementation of the Strategy (Action Plan) by the end of 2022, and the government approved it in March 2023.

Assessment of compliance

Ukraine's Anti-Corruption Strategy and Action Plan are a result of a comprehensive policy analysis and highly inclusive consultation process, representing a good practice example of a thorough, evidence-based, high-quality policy in the anti-corruption field. However, there were significant delays in the adoption of the Strategy and further delays of the adoption of the Action Plan, and anti-corruption policy framework has not been in place for the most part of the reporting period. While the Strategy is based on a wide range of evidence, it was developed in 2020, therefore, it fails to consider newly emerged risks resulting from the ongoing war following Russia's unprovoked and unjustified aggression against Ukraine. The Action Plan adopted in 2023 partially addresses some of these risks.

Benchmark 1.1.1.

The following evidence has been used for developing objectives and measures of the policy documents, as reflected in the policy documents or their supporting materials:

Element	Compliance
A. Analysis of the implementation of the previous policy documents (if they existed) or analysis of the corruption situation in the country	✓
B. National or sectoral corruption risk assessments	✓
C. Reports by state institutions, such as an anti-corruption agency, supreme audit institution, and law enforcement bodies	✓
D. Research, analysis, or assessments by non-governmental stakeholders, including international organisations	✓
E. General population, business, employee, expert, or other surveys	✓
F. Administrative or judicial statistics	✓

The Law of Ukraine on Prevention of Corruption (CPL) (Art. 18) requires that an anti-corruption strategy is based on an analysis of corruption situation and results of the implementation of previous strategy. NACP has used a wide range of evidence in developing anti-corruption policy documents.[9] Both Strategy and Action Plan are accompanied by the detailed notes explaining the policy considerations and the choice of specific policy priorities (15 priority areas), explicitly referencing evidence in line with this benchmark, including:

- An analytical report on the implementation of the Anti-Corruption Strategy for 2014-2017 and the State Programme for the implementation of the Strategy. [10]
- Sectoral corruption risk assessments conducted by NACP, and risk assessments carried out by non-government think-tanks.[11]

9 NACP's webpage includes a dedicated page with a compilation of anti-corruption research and relevant evidence https://nazk.gov.ua/uk/doslidzhennya-koruptsiyi/

10 https://nazk.gov.ua/wp-content/uploads/2021/02/2.1.-Assessment-Implem-UKR-1-2014-2017.pdf

11 The Action Plan refers to many sectoral risk assessments conducted by the NACP in 2020 – 2022 (on such issues as the introduction of the land market, privatization, defence sector, health care, higher education etc).

- The National Reports on the Implementation of the Principles of Anti-Corruption Policy for 2019 and 2020, which incorporates data from specialized anti-corruption institutions.[12]
- Reports, studies, and research produced by Ukrainian non-government stakeholders, as well as an analysis conducted by international organisations.
- National and sectoral surveys, conducted by both government and non-government stakeholders. These surveys include annual surveys of citizens and businesses, following a standardized methodology developed and approved by NACP.
- Administrative and judicial statistics, included in the annual National Reports on the Implementation of the Principles of Anti-Corruption Policy, compiled by NACP.[13]

Ukraine is compliant with all elements of the benchmark.

While non-governmental stakeholders were unanimous in praising Ukraine's anti-corruption policy, as the best Ukraine has ever had so far, given a considerable time gap between their development and adoption, they contested their relevance to most current risks and pressing challenges. For example, corruption risks of wartime and post-war reconstruction following Russia's unprovoked and unjustified war of aggression in Ukraine, merit proper policy responses. The authorities explained that some relevant measures have been reflected in the Action Plan to mitigate these risks. Others could be addressed either by amending the Action Plan, or in other forthcoming policy documents, such as the De-oligarchisation Plan and Annual Ukraine-NATO national programmes.

Benchmark 1.1.2.

	Compliance
The action plan is adopted or amended at least every three years	✓

The benchmark encourages a regular review and update of anti-corruption action plan to ensure its continued relevance and practical application. To be considered compliant, an action plan must be in force and dated (or amended) within the past three years at the time of the review. In Ukraine's case, the previous action plan expired at the end of 2017. The government approved the new Action Plan in March 2023, covering three years. **Thus, Ukraine is compliant with the benchmark.** It is advisable that the regular review and update of the Action Plan based on the monitoring of its implementation consider the emerging systemic challenges resulting from the ongoing full-scale war in Ukraine.

12 State Programme includes reference to 19 different reports produced by state institutions, including reports of the Accounting Chamber of Ukraine, and the State Audit Service.

13 Although, as it was reflected in the Pilot 5th Round of Monitoring Report on Ukraine, there is no centralized publication of enforcement statistics of corruption offences, which results in its inconsistency and incoherence. OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://doi.org/10.1787/b1901b8c-en, 135-136.

Benchmark 1.1.3.

Policy documents include:

Element	Compliance
A. Objectives, measures with implementation deadlines, and responsible agencies	✓
B. Outcome indicators	✓
C. Impact indicators	✓
D. Estimated budget	X
E. Source of funding	✓

The Strategy and Action Plan comprise high-quality comprehensive policy framework and include all key elements listed in the benchmark. The Strategy covers 15 corruption-prone areas broken down into 72 objectives with 272 specific goals[14] across various policy areas. Specific measures, implementation deadlines, and responsible agencies are listed in the Action Plan (Annex 2), including overall, 1187 specific measures to be implemented by 109 agencies over the course of three years. The Strategy includes impact indicators, and the Action Plan provides outcome indicators for each of 72 specific goals set in the Strategy. Among the seven indicators referred to as impact indicators, four of them listed below, are direct impact indicators [15], the three others are proxy indicators of international indices:

- An increase in the share of the population with a negative attitude towards corruption.
- A decrease in the share of the population with recent personal corruption experiences.
- An increase in the share of citizens ready to report corruption cases.
- An increase in the share of citizens who reported witnessed corruption.

The Action Plan mirrors the same set of impact indicators and provides that the assessment should be based on data collected from the annual corruption surveys conducted by NACP. The Action Plan also specifies the source of information to assess the implementation of outcome indicators, and features output indicators linked to each specific measure. Further, it designates government bodies responsible for providing information to assess each of these indicators. **Therefore, the elements A-C are met.**

As regards the financial parts for policy documents, that are essential for proper policy planning and implementation, the Action Plan template (Annex 2) includes a column for estimating budget required to implement specific measures. But the actual estimates are provided only for NACP's activities. The benchmark requires that the budget estimates should be prepared as a part of the planning when elaborating an action plan. If the timeframe of an action plan is long, which may make budget estimations difficult, the estimation should be done at least on yearly basis. Given the Action Plan does not include full estimates for at least one year, **the element D is not met.**

NACP has produced budget estimates to cover its own expenses related to the Action Plan's implementation in 2023-2025. Additionally, by analysing requests of other implementing agencies, it has prepared an overall budget estimate for Action Plan implementation in 2023, which is not fully covered by

14 These are referred to in the Strategy as "expected strategic results".

15 Impact indicators are those that demonstrate the long-term effects of policy interventions (see Guide at pg. 8)

the funds allocated in the 2023 state budget due to the asynchrony of adoption of the Action Plan and the State Budget cycle.[16]

Moreover, in 2022, at the initiative of NACP, a dedicated budget programme titled "Implementation of Anti-Corruption Strategies" was introduced to the State Budget of Ukraine for 2023, with initial funds allocated for its implementation. The purpose of this programme is to fund the execution of the Action Plan measures by relevant implementing authorities, when they require specific financial resources for example for developing IT solutions, outsourcing surveys, or conducting awareness-raising campaigns. Dedicated funds will be first allocated to NACP which will be responsible for disbursing them to the implementing agencies.

This new solution represents a promising shift towards a comprehensive approach to funding anti-corruption policy implementation in Ukraine. However, the extent to which the government will allocate the necessary funds to ensure implementation of the envisaged measures, remains to be seen. At the same time, given that NACP's new role in ensuring the funding for implementing agencies, the Agency will have to demonstrate an adequate administrative capacity for managing and overseeing the delivery of such funds.

The Strategy (Chapter 1.3) provides that the implementation should be funded from dedicated funds of the state and local budgets, as well as from international technical assistance. In line with this, the Action Plan includes information on whether the measure is to be funded by the state budget, local budget, or through international technical cooperation projects. This provides a useful reference for planning expenses by the government, including local government level, and donors. Most of the measures, such as the development of regulatory acts, are foreseen to be funded from the State Budget for the respective year, as allocated to the implementing agency in question. **Thus, the element E is met.**

Indicator 1.2. The anti-corruption policy development is inclusive and transparent

Background

An anti-corruption strategy is passed as a law by the Parliament. NACP develops an initial draft, and the Cabinet of Ministers submits it to the Parliament. This section assesses the public consultations conducted by NACP during the initial drafting of the Strategy and not the Government or parliamentary procedure for consideration of the legislation.

Assessment of compliance

The development of the anti-corruption policy in Ukraine has been inclusive and transparent. The drafts of the policy documents have been published online and widely disseminated. NACP held extensive public consultations, providing overall sufficient time for feedback, and invested resources in analysing and responding to the provided feedback. These responses have also been published. During the parliamentary consideration of the Strategy, the revisions were visible on the Parliament's website, allowing for easy tracking of changes. Similarly, NACP website provided updates on the amendments to the Action Plan from other government bodies during its consideration by the Cabinet of Ministers.

16 The funds allocated to the dedicated budget programme in 2023 are EUR 42,500, while the estimated needs for the year, according to the NACP are about EUR 329,000.

Benchmark 1.2.1.

The following is published online:

Element	Compliance
A. Drafts of policy documents	✓
B. Adopted policy documents	✓

Both Strategy and Action Plan, have been published online in their draft and adopted versions. **Therefore, Ukraine complies with both elements of the benchmark.**

To disseminate the information to the interested parties, NACP accompanied the publication of the draft Strategy on its website with an announcement about the forthcoming public consultations and shared this announcement through its social media pages. The draft and adopted versions of the Strategy are available on the NACP website, along with the analytical materials developed during public consultations. They are also published on the web portal of the Parliament as a part of a parliamentary routine practice. This web portal allows individuals to track the progress of the review in both the parliamentary committee and Parliament's floor.

Similarly, the draft and approved versions of the Action Plan are published on NACP website. Given the size of the Action Plan, the draft was published in sections, with the announcements made regarding relevant thematic public consultations. The adopted Action Plan is also available on the web portal of the Cabinet of Ministers, in line with the government's standard practice.

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

Element	Compliance
A. With sufficient time for feedback (no less than two weeks after publication)	✓
B. Before adoption, the government provides an explanation regarding the comments that have not been included	✓
C. An explanation of the comments that have not been included is published online	✓

NACP conducted comprehensive public consultations on the draft Strategy, positively assessed by stakeholders and widely regarded as the best practice of public policy development so far in Ukraine. The Agency engaged wide range of stakeholders in this process including civil society, international community, and anti-corruption experts.

NACP published the draft Strategy on June 23, 2020. The consultations took place through virtual discussions and written feedback. From June 26 to July 10, 2020, NACP organized eight thematic virtual consultations, two of which were co-organized with Transparency International Ukraine, broadcasted on NACP's social media pages. Additionally, throughout July and August, NACP received written comments through a dedicated email address.

According to NACP, 270 participants and 30 invited experts attended virtual discussions, while attracting the attention of more than 30,000 viewers on NACP's social networks pages. In total, NACP received eight detailed contributions from international and non-governmental organisations, along with 30 other written

comments sent to its official email address. These contributions resulted in 675 unique amendments to the text of the Strategy.

In 2022, the draft Action Plan underwent public consultations following the same pattern. In September – November 2022 NACP conducted 11 virtual consultations focused on specific chapters of the Action Plan. Although some non-government representatives contended that NACP did not always allow sufficient time to provide written feedback for specific chapters, authorities did not reject any written suggestions provided after the established deadline. **Thus, element A is met for both the Strategy and the Action Plan.**

To ensure transparency, the NACP compiled an extensive comparative table on the comments received for the Strategy, including both accepted and rejected comments with explanations on the comments that have not been included, and published this table on its website[17]. The same approach was later applied in 2022 to the draft Action Plan, with a similar comparative table published[18]. **Therefore, the elements B and C are met as well.**

After the public consultations on the Action Plan, NACP held inter-agency consultations collecting feedback from over a hundred state bodies. NACP also published on its website all amendments suggested by other government bodies for information to the public on inputs and contributions from various government agencies. While the monitoring team received mixed opinions from non-government stakeholders on the nature of the amendments introduced to the Strategy in the Parliament and to the Action Plan during the inter-agency consultations process, there is a consensus that the adopted policy documents remained relevant and of a high quality.

Indicator 1.3. The anti-corruption policy is effectively implemented

Background

Anti-corruption policy framework was not in place for most of the reporting period. The implementation has started in 2023 and is ongoing in the context of the war.

Assessment of compliance

Ukraine has started implementing its anti-corruption policy, following the adoption of the Action Plan, and according to the authorities, state bodies show the commitment to make the progress. The lack of sufficient funding, and wartime related challenges, as well as a priority that will need to be given to the post-war reconstruction evidently, may pose threats to its effective implementation. As the framework is now in place, Ukraine is encouraged to secure the necessary resources and work towards implementing its ambitious anti-corruption policy.

17 See: https://nazk.gov.ua/wp-content/uploads/2020/09/NAZK-Porivnyalna-tablytsya-do-proektu-Antykoruptsijnoyi-strategiyi-na-2020-2024-roky.pdf

18 Comments to the amendments received during public consultations could be accessed here: https://nazk.gov.ua/uk/derzhavna-antykoruptsijna-programa/

Benchmark 1.3.1.

	Compliance
Measures planned for the previous year were fully implemented according to the government reports	0

The purpose of this benchmark is to encourage an effective implementation of the commitments made by state bodies as reflected in the anti-corruption policy documents. It also encourages realistic planning at the beginning of the policy cycle.

In the case of Ukraine, the Action Plan for the new Strategy was not adopted until 2023. There were no coordinated government activities to implement the Strategy in 2022, and no assessment of implementation was made. **Therefore, this benchmark is not met.**

While NACP has been proactively pushing the adoption of the policy documents, related significant delays hindered the anti-corruption policy implementation. According to the authorities, the implementation looks promising in the first half of 2023 and implementing agencies are showing commitment. At the same time, some adjustment of the timelines will likely be necessary.

The stakeholders have a concern that the reconstruction and rebuilding of Ukraine as an obvious policy priority may take over the objective of the implementation of the ambitious anti-corruption policy further complicating the challenging task of NACP and other implementing agencies. A whole-of-government approach would be needed along with sufficient budget and resources for a success. A well-coordinated development support will also be a key factor in this process. The reconstruction efforts should also include integrity and anti-corruption elements.

Benchmark 1.3.2.

	Compliance
Anti-corruption measures unimplemented due to the lack of funds do not exceed 10% of all measures planned for the reporting period	X

As the Action Plan was not in place in 2022, the anti-corruption measures outlined in the Strategy have not been implemented. The authorities informed during the on-site visit that while funds are included in the state budget for 2023 (UAH 1.7 mln), a full budget of implementation has yet to be secured, given the different timelines of budget cycle, and the development and adoption of the anti-corruption policy. As the state budget is scarce for anti-corruption programme, various support programmes would need to be mobilized for the implementation. In 2023, according to NACP, the funds are mainly lacking for IT tools for various implementing agencies foreseen by the Action Plan.

Indicator 1.4. Coordination, monitoring, and evaluation of anti-corruption policy is ensured

Background

NACP is a body responsible for development, coordination, monitoring and evaluation of anti-corruption policy implementation in Ukraine. In the assessment period, NACP primarily focused on the development

of the Action Plan and after its adoption in 2023, started putting in place a coordination and monitoring framework. The war has affected the whole Government of Ukraine and the NACP staff was no exception as they were forced to leave their residences to relocate either to other regions of Ukraine or abroad.

Assessment of compliance

NACP did not perform its policy coordination and monitoring functions for the most part of the assessment period. The respective staff was primarily engaged in the policy analysis and development with some commendable results but the establishment of a dedicated unit for coordination and monitoring was delayed. The NACP is in the process of setting up a coordination mechanism and has launched an IT system for monitoring the implementation of anti-corruption policy.[19] There are concerns about the sufficiency of resources allocated to this function considering the scope of the policy documents. These concerns must be addressed as soon as possible to effectively implement the anti-corruption policy.

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

Element	Compliance
A. Coordination and monitoring functions are assigned to dedicated staff (secretariat) at the central level by a normative act, and the staff is in place	✓
B. The dedicated staff (secretariat) has powers to request and obtain information, to require participation in the convened coordination meetings, to require submission of the reports of implementation	✓
C. Dedicated staff (secretariat) has the resources necessary to conduct respective functions	x
D. Dedicated staff (secretariat) routinely provides implementing agencies with methodological guidance or practical advice to support policy implementation	✓

NACP is responsible for anti-corruption policy coordination and monitoring functions in Ukraine (Art. 18-2 – 18-3, CPL). It has a dedicated unit – State Anti-Corruption Policy Coordination, Monitoring and Assessment of Effectiveness Unit within the Anti-Corruption Policy Department (Department) – mandated to implement the relevant functions in line with a NACP regulation. This unit was established in March 2023 and has a total of 5 staff, of which 1 position was vacant at the time of the on-site visit. The Anti-Corruption Policy Department has in total 21 positions (the number of its staff was recently increased); at the time of the on-site visit, it had three vacancies, two of the selection procedures were ongoing. **Given that the coordination and monitoring functions are assigned to a dedicated unit at the central level by a normative act, and staff is in place, the element A is met.**

The CPL provides NACP with substantial powers for coordination and monitoring. These include the power to request documents and information related to the implementation of its duties, including classified information, and the power to receive written explanations from public agencies. The participation in coordination meetings can be requested through the Head of NACP. Furthermore, implementing agencies are required to provide NACP with semi-annual status reports on the implementation, and NACP has the authority to determine the specific information and statistical data required from implementing agencies, through the indicators and sources of information in the Action Plan (see the benchmark 1.1.3 above). In

[19] See: https://dap.nazk.gov.ua/

cases of non-compliance, NACP can issue obligatory orders and initiate administrative sanctions applied on violators by court. **The element B is met.**

While the dedicated unit has necessary powers for policy coordination and monitoring, it lacks necessary resources to effectively carry out its functions, given the ambition and volume of the Ukraine's anti-corruption policy and the comprehensive framework for coordination and monitoring of the policy implementation. The unit of 5 persons is expected to coordinate and monitor the implementation of the Action Plan with more than 1000 specific measures, 95 implementing agencies, and at least 15 working groups. The monitoring team is concerned about the lack of sufficient resources allocated to this function. It calls on Ukraine to fill in the vacant positions as soon as possible and, add further resources as necessary, to effectively implement the related functions in practice. Furthermore, the authorities informed that the draft laws are being considered in the parliament which, if adopted, will result in lowering salaries of the NACP staff. To be successful in its work, NACP must endeavour ensuring stability and retention of its staff. **Ukraine is not compliant with the element C of this benchmark.**

After the adoption of the Action Plan in March 2023, NACP began providing advice and coordination to implementing agencies. The Agency highlighted specific examples where it offered guidance and assistance in implementing the Action Plan to various state bodies, including the Ministry of Defence, NABU, and the National Agency on Civil Service of Ukraine. **Thus, the element D is met.**

In July 2023, NACP has passed a separate new procedure for the coordination of implementation of the Strategy and Action Plan further detailing the powers of the dedicated staff and the procedures for coordination with other implementing agencies. At the top level of the coordination framework, a High-Level Coordination Group on anti-corruption policy will be created.[20] This Group is envisaged by the Law and is co-chaired by the Head of NACP and the Minister of the Cabinet of Ministers. According to authorities, the Group should include representatives of government bodies responsible for Action Plan implementation at the level of Ministers. It should meet annually to review the annual assessment reports on implementation of the Action Plan and the Strategy. This new set-up will help secure a higher-level support and accountability for the implementation.

At the working level, NACP plans to set up 15 sectoral coordination and monitoring groups, matching 15 policy priorities, which would include implementing agencies but also representatives of non-governmental stakeholders and meet regularly to coordinate and monitor the progress in implementation of Ukraine's anti-corruption policy. To cover inter-sectoral issues, several inter-sectoral working groups are planned to be created. At the time of the on-site visit, only one inter-sectoral working group focused on the development of digital anti-corruption solutions had been created and was functioning.

NACP also reported about creation of the Information System for Monitoring the Implementation of the State Anti-Corruption Policy, which was in the planning phase during the pilot and was launched in July 2023. The system is widely recognized as an important feature for monitoring progress allowing all implementing agencies to quarterly report on implementation of the measures of the Action Plan, and NACP to produce monitoring and assessment reports. It also allows for public disclosure of these reports (the first report became public in August 2023) and provides modules for civil society feedback (which were under development at the time of the on-site visit).

20 There is also the National Council on Anti-Corruption Policy under the President of Ukraine. This is a consultative body with a wide representation of stakeholders, that advises the President of Ukraine on the issues of anti-corruption policy. The National Council meets on an ad-hoc basis and therefore is not considered as a regular element in the system of coordination of Strategy implementation. The last meeting of the National Council took place in November 2020.

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

Element	Compliance
A. A monitoring report is prepared once a year	X
B. A monitoring report is based on outcome indicators	X
C. A monitoring report includes information on the amount of funding spent to implement policy measures	X
D. A monitoring report is published online	X

This benchmark evaluates the practice of monitoring policy implementation. Monitoring functions have not been carried out, nor was a monitoring report prepared in the reporting period in Ukraine. At the same time, the first monitoring report covering the implementation of the measures of the Action Plan in the first half of 2023 was published in August 2023 with the launch of the IT system for monitoring the implementation of anti-corruption policy. The first annual monitoring report is planned to be produced in the first quarter of 2024.

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

Element	Compliance
A. An evaluation report is prepared at least at the end of each policy cycle	X
B. An evaluation report is based on impact indicators	X
C. An evaluation report is published online	X

In 2017, NACP produced an annual National Report on the Implementation of the Principles of the Anti-Corruption Policy, which included a chapter dedicated to the implementation of the strategy and the action plan. The report is published on NACP website. [21] This chapter indicated that 73% of the action plan was implemented, with 128 out of 176 measures successfully executed. However, this assessment lacked impact indicators and provided only general information on the number of implemented measures, without details. This chapter cannot qualify as an evaluation report for the purposes if this assessment, as it did not evaluate the effectiveness and impact of the policy, which is required by the Guide. **Therefore, Ukraine is not compliant with the elements of this benchmark.**

An external assessment of implementation was however prepared with the support of the European Union Anti-Corruption Initiative in Ukraine (EUACI) and used in the development of the policy documents in force.[22]

21 https://nazk.gov.ua/wp-content/uploads/2019/06/Natsdopovid-2017.pdf

22 2.1.-Assessment-Implem-UKR-1-2014-2017.pdf (nazk.gov.ua)

For the new policy cycle, in the final year of the strategy implementation, in 2025, NACP is expected to produce an evaluation report (Art. 20, CPL). This report should include an assessment of the effectiveness of the Strategy and Action Plan implementation, in line with the requirements of the benchmark.

Benchmark 1.4.4.

Non-governmental stakeholders are engaged in the monitoring and evaluation:

Element	Compliance
A. Non-governmental stakeholders are invited to regular coordination meetings where the monitoring of the progress of the policy implementation is discussed	X
B. A monitoring report reflects written contributions of non-governmental stakeholders	X
C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders	X

NACP did not carry out coordination and monitoring work for the most part of the reporting period. The first monitoring report covering the implementation of the measures of the Action Plan in the first half of 2023 was published in August 2023, outside the reporting period. At the same time, non-governmental stakeholders responding to the questionnaire provided examples of the engagement with NACP and relevant anti-corruption bodies, beyond coordination, monitoring and evaluation, including through participation in the development of policy documents, and specific anti-corruption reform initiatives (courses for SMEs, popularization of whistleblower protection, and others). **Consequently, Ukraine is not compliant with the elements of this benchmark.**

While civil society partners were widely engaged in the development of the draft Action Plan, their involvement in the coordination and monitoring of policy implementation has yet to be ensured. The Information System for Monitoring the Implementation of the State Anti-Corruption Policy would allow non-government stakeholders to directly contribute to monitoring the implementation of the Strategy and Action Plan and provide their assessment of the situation. This information must be taken into account in the monitoring reports.

The Civic Council of NACP is operational. Authorities plan to include the members of the Civic Council into each of the 15 sectoral coordination groups NACP plans to establish, however civic engagement should not be limited to the Civic Council and should include other non-governmental stakeholders to ensure accountability.

Box 1.1. Good practice: Evidence-Based Anti-Corruption Policy of Ukraine

The development and adoption process of the new Strategy and Action Plan in Ukraine can be considered exemplary for transparency and reliance on solid evidence. Three distinct features make this process noteworthy.

First, Ukrainian authorities effectively utilized existing data and research to shape the priorities of the new strategy. Analysis provided by the government, civil society, and foreign stakeholders, along with lessons learned from the implementation of the previous Strategy, contributed to formulating the approach for the new one. NACP's webpage houses a compilation of anti-corruption research and relevant evidence, providing a solid foundation for justifying equal focus on anti-corruption norms, institutions, and mitigating corruption risks in key public administration sectors. The reliance on robust evidence allowed NACP to justify its approach to the Strategy its discussions with the Cabinet of Ministers and the Parliament of Ukraine.

Second, Ukraine has a good practice of conducting regular corruption surveys by the government. Since 2020, NACP has been conducting annual surveys of citizens and businesses, following standardized methodology developed and approved by the agency. These surveys serve a dual purpose: identifying priority areas for strategy and measuring key indicators to evaluate its effectiveness.

Third, NACP demonstrated a strong commitment to involving non-government expertise, instrumental in achieving cross-sectoral support for the Strategy. Non-governmental experts played a pivotal role in drafting both the Strategy and Action Plan from the outset, supported by international technical cooperation projects. Later, during the phase of public consultations, hundreds of amendments from non-government stakeholders were reviewed and some incorporated into the final text, improving its quality and fostering broad support among key stakeholders.

Despite some last-minute amendments during consideration in the Cabinet of Ministers and Parliament, there is widespread consensus among stakeholders that the adopted strategy is an ambitious and relevant document. The evidence-based approach has enabled Ukraine to develop a comprehensive anti-corruption policy that is a solid basis for effective implementation.

Assessment of non-governmental stakeholders

Non-government stakeholders generally positively assess the **development and adoption** of the Strategy. They look forward to the implementation but also express several concerns. One of the key recommendations is that sufficient resources need to be allocated to support NACP in its coordination efforts. The ongoing war and resulting budget deficit pose challenges that may hinder NACP and other responsible agencies from fully implementing the Action Plan.

Non-government stakeholders also point to many **new corruption risk domains** which emerged because of the war, and which were not addressed in the current Strategy and Action Plan. These include new risks in the tax administration, rather non-transparent procedures to authorize foreign travel to men, non-transparent application of sanctions against businesses and many more. This clearly points to the need for regular proactive updates of the policy documents.

Furthermore, non-government stakeholders express broader concerns about the **negative impact** of Russia's war on Ukraine's **anti-corruption policy**. The declaration of Martial Law has led to the suspension of several vital anti-corruption tools that were previously central to policy efforts. Specifically, the obligation for public officials to submit asset declarations has been suspended, and measures by NACP

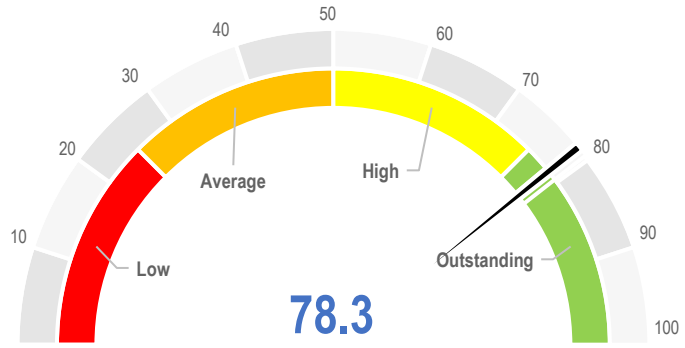
to verify previously submitted declarations have been put on hold. Additionally, simplifications in public procurement procedures, which compromise transparency, have been implemented. It is crucial to promptly reverse this legislation, except for minor exemptions that are justified by the Martial Law situation.

Stakeholders also raise concerns that during Martial Law, NACP has devoted a sizeable portion of its **human resources** to the activities unrelated to anti-corruption policy. Instead, the agency has focused on assisting other government bodies responsible for applying restrictive measures (sanctions) on Russian public officials and oligarchs linked to the Russian war effort. Another activity which is unrelated to NACP's core mandate was the establishment of the Register of the International Sponsors of War, which includes companies present at the Russian market. Moreover, in the case of the Register of International Sponsors of War, the lack of legal regulation and transparent procedures for inclusion into and exclusion from the above Register causes criticism and associated reputational risks to NACP.

2 Asset declarations

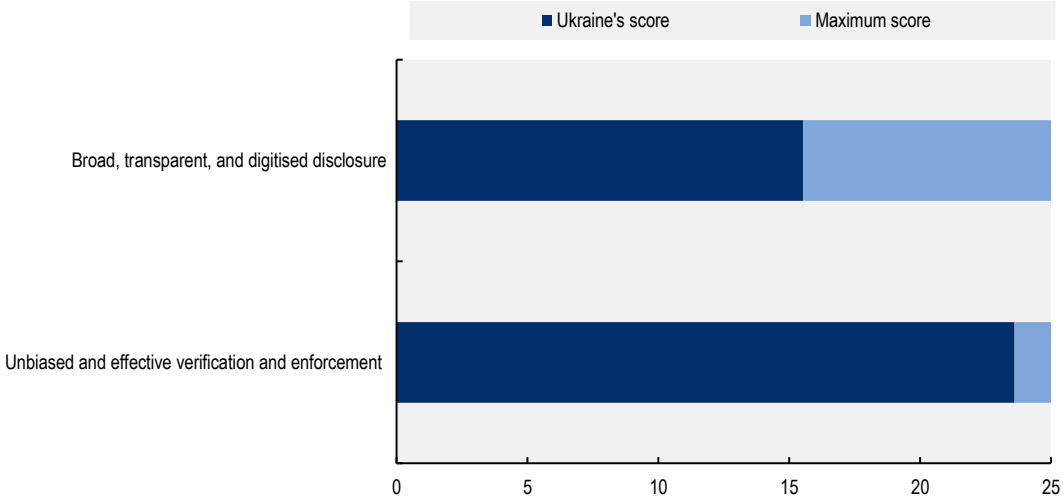
Ukraine's asset declarations system is advanced, highly transparent and digitized, it applies to a broad category of public officials, and has a wide scope. The asset declarations, their verification and public access have been put on hold during the Martial Law due to Russia's war of aggression against Ukraine. Many public officials submitted declarations in the assessment period voluntarily, nevertheless. Ukraine must fully reinstate asset declarations, thus upholding principles of transparency and accountability, and preventing rolling back of the achievements of its robust system. A risk-based verification of declarations is in place, primarily focused on high-level officials. The NACP has powers to access registers and databases, and the resources to conduct verifications, but the track record of sanctions for violations is relatively low and the effectiveness of the end-to-end process of the complex, multi-phased verification framework is questionable. Ukraine is encouraged to ensure an unhindered risk-based verification of declarations with a focus on high-level officials. The verification process must be streamlined in line with the law, avoid overlaps and ensure coordination and cooperation within the NACP, and with other relevant agencies. Transparency of verification and its results must be ensured to rebuild public trust in the verification of asset declarations in Ukraine.

Figure 2.1. Performance level for Asset Declaration is outstanding



Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). The figure for PA 2 is a percentage value for asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50 as in figure 2.2.

Figure 2.2. Performance level for Asset Declaration by indicators



Note: The review did not include conflict of interest section of PA 2 (Indicators 1 and 2) and it covered only asset declarations (Indicators 3 and 4). Absolute value of the score is 39.15 of maximum possible score of 50.

Indicator 2.3. Asset and interest declarations apply to high corruption risk public officials, have a broad scope, and are transparent for the public and digitized

Background

A comprehensive framework for asset and interest declarations was introduced in Ukraine in 2014 and became operational in 2016. Since then, asset declarations have been filed and automatically published online in an open data format. The system covers a high number of declarants and requires disclosing

broad categories of information, including assets, income, expenditures, and interests of public officials and their family members. There have been numerous attempts to obstruct the implementation of the system through amendments in the law and legal challenges. In 2020, the Constitutional Court decision paralyzed the asset declaration system and sanctions having declared unconstitutional some powers of NACP and criminal responsibility for intentional failure to declare and false declarations. These have been later restored but without a retroactive effect, resulting in a significant enforcement gap. In addition, frequent changes in the system of verification of asset declarations, usually followed the changes in the NACP leadership.

In 2022, the framework for asset declarations faced significant challenges due to Russia's war of aggression against Ukraine. Asset declarations and their verifications have been suspended, along with the public access to the online registry of declarations. Ukrainian officials were exempted from asset and interest disclosure, and the deadline for submitting asset declarations covering the entire period of asset disclosure being on hold, was postponed until after 90 days following the end of the Martial Law. These declarations do not have to include information on income and expenditures associated with receiving or providing humanitarian aid to the people affected by the war or providing charity support to Ukrainian Armed Forces. Nevertheless, in 2022 public officials voluntarily submitted more than 228,000 asset declarations through the electronic system.

In March 2023, the Government of Ukraine committed to restoring asset disclosure and reinstating the NACP's function to verify declarations [23] and the relevant law was adopted in September. [24]

The analysis provided in the following sub-sections is primarily based on Ukraine's system of asset declarations in the law and practice, outside the Martial Law. Where applicable, references are made to the circumstances caused by Russia's war against Ukraine. As the system has been suspended during the Martial Law, the benchmarks relevant to the framework and the available mechanism of asset and interest disclosure, are assessed as compliant, with the understanding that the situation was temporary. However, in case of continued suspension of the system, the compliance ratings of these benchmarks will need to be reconsidered. As the law restoring asset declarations was adopted outside the assessment period, the monitoring team did not have an opportunity to analyse it.

Assessment of compliance

In Ukraine, before the suspension due to the state of war, asset and interest declarations applied to a broad category of public officials (about 700,000 declarants overall), had a broad scope of information to be disclosed, were transparent for the public through automatic online publication and were digitized. As a result of Russia's war against Ukraine, asset declarations, their public access and verification, have been suspended. Ukraine must reinstate the asset declarations system in practice fully, including NACP`s verification function, as well as the public access as it existed before the war. Any exemptions from the previously existing system, if applied, should be based on a clear justification caused by the security reasons, and involve a prior public discussion. The monitoring team urges Ukraine to ensure upholding the principles of transparency and accountability and prevent rolling back the achievements of a robust asset and interest disclosure system in Ukraine.

23 IMF-Ukraine: Letter of Intent and Memorandum for Economic and Financial Policy, 24 March 2023. https://bank.gov.ua/en/files/GUOsPxjckrFWnTy

24 https://itd.rada.gov.ua/billInfo/Bills/Card/42379

Benchmark 2.3.1.

The following officials are required to declare their assets and interests annually:

Element	Compliance
A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies	✓
B. Members of collegiate central public authorities, including independent market regulators and supervisory authorities	✓
C. Head and members of the board of the national bank, supreme audit institution	✓
D. The staff of private offices of political officials (such as advisors and assistants)	X
E. Regional governors, mayors of cities	✓
F. Judges of general courts, judges of the constitutional court, members of the judicial governance bodies	✓
G. Prosecutors, members of the prosecutorial governance bodies	✓
H. Top executives of SOEs	X

The scope of officials required to annually submit their asset declarations is broad and includes nearly 700,000 public officials (Art. 3 and Art. 45 CPL), meeting the requirements of the elements A-C and E-G of the benchmark. However, the law does not extend the obligation to submit asset declarations to all advisors and assistants of political officials, and all top executives of SOEs, **making Ukraine not compliant with elements D and H of this benchmark.**

Advisors and assistants of the President of Ukraine are covered by the asset disclosure obligation (CPL Art.3.1.1.m.), but not of other political officials. There was a provision in the CPL expanding the asset disclosure obligation to all full-time advisors and assistants of political officials, but it was abolished in March 2020. Top executives of state companies that are established as legal entities of public law are required to submit asset declarations (Article 3, Part 1, Item 2, Sub-item (a) of the CPL). However, this obligation does not include SOEs established as legal entities of private law. For corporate entities where the state holds the majority stake, the law requires only members of their supervisory boards to submit asset declarations.

Benchmark 2.3.2.

The legislation or official guidelines require the disclosure in the declarations of the following items:

	Element	Compliance
A.	Immovable property, vehicles and other movable assets located domestically or abroad	✓
B.	Income, including its source	✓
C.	Gifts including in-kind gifts and payment for services and indicating the gift's source	✓
D.	Shares in companies, securities	✓
E.	Bank accounts	✓
F.	Cash inside and outside of financial institutions, personal loans given	✓
G.	Financial liabilities, including private loans	✓
H.	Outside employment or activity (paid or unpaid)	✓
I.	Membership in organizations or their bodies	✓

The CPL is **fully aligned with this benchmark**. Article 46 of the CPL specifies the scope of information to be disclosed in asset declarations, which includes:

A. Immovable property, including unfinished construction, linked to public officials and their family members; diverse types of vehicles of public officials and their family members; movable assets of public officials and their family members that exceed a threshold of 100 subsistence minimums for able-bodies persons[25] (subsistence minimums) located domestically or abroad.

B. All types of income received by public officials and their family members, along with its source.

C. Gifts received by public officials and their family members that are worth more than 5 subsistence minimums. The definition of gift includes in-kind gifts and payment for services.

D. Shares in the companies, other corporate rights of declarants and their family members; securities owned by public officials and their family members.

E. Bank accounts opened by public officials and their family members.

F. Financial assets of public officials and their family members, including cash inside and outside financial institutions, personal loans granted, and assets in banking metals, if the total value reaches a threshold of 50 subsistence minimums.[26]

G. Diverse types of financial liabilities of public officials and their family members, if the amount exceeds a threshold of 50 subsistence minimums.

H. Outside employment or activity of public officials (paid or unpaid).

I. Participation of public officials in managing, controlling or supervising bodies of civic associations, charities, self-regulatory or self-governing professional organisations, as well as membership in these organisations.

25 As of 1 January 2023, 100 subsistence minimums equal to UAH 268,400 (USD 7,341).

26 As of 1 January 2023, 50 subsistence minimums equal to UAH 134,200 (USD 3,671).

At the same time, in July 2022 the Ukrainian Parliament amended the CPL to relax certain requirements during the period of Martial Law. For asset declarations covering this period, public officials are not required to submit information on:

1. Income received as humanitarian assistance or the forms of support: free housing, transportation services, medical services, medicines, or financial assistance from foreign governments.
2. Funds personally raised by public officials to provide humanitarian assistance to individuals affected by the war, provided that relevant expenditures are confirmed (these expenditures are also exempt from declaration).
3. Funds personally raised by public officials to support to the Armed Forces of Ukraine, which are transferred to the benefit of the Armed Forces of Ukraine.

Even though, the authorities met during the on-site visit asserted that these changes do not pose a risk for concealing assets, the monitoring team believes there are risks associated with covering unjustified increase in assets due to income received as humanitarian assistance or funds raised. The monitoring team invites Ukraine to pay particular attention to these exceptions, carefully addressing associated risks.

Benchmark 2.3.3.

The legislation or official guidelines contain a definition and require the disclosure in the declarations of the following items:

Element	Compliance
A. Beneficial ownership (control) of companies, as understood in FATF standards, domestically and abroad (at least for all declarants mentioned in Benchmark 3.1.), including identification details of the company and the nature and extent of the beneficial interest held	✓
B. Indirect control (beneficial ownership) of assets other than companies (at least for all declarants mentioned in Benchmark 3.1.), including details of the nominal owner of the respective asset, description of the asset, its value	✓
C. Expenditures, including date and amount of the expenditure	✓
D. Trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust's settlor, trustees, and beneficiaries	X
E. Virtual assets (for example, cryptocurrencies), including the type and name of the virtual asset, the amount of relevant tokens (units), and the date of acquisition	✓

The scope of disclosure as provided in Article 46 of the CPL **aligns with elements A, B, C, and E** of the benchmark:

- Beneficial ownership of companies: The CPL includes the requirement to disclose beneficial ownership of companies, as defined in the anti-money laundering law (Article 46, Part 1, Item 5-1 of the CPL).
- Beneficial ownership of assets other than companies: The requirement to disclose beneficial ownership of assets other than companies (Article 46, Part 3 of the CPL) applies to public officials holding responsible and especially responsible positions.

- Expenditures: The CPL obliges declarants to disclose expenditures that exceed 50 subsistence minimums (Article 46, Part 1, Item 10 of the CPL), including the date and amount of expenditure[27].
- Virtual assets: The CPL mandates the disclosure of non-material assets, including cryptocurrencies (Article 46, Part 1, Item 6 of the CPL), meeting the requirements of the element E of the benchmark.

Regarding trusts, while the disclosure is envisaged (Art. 46.1. 5-1, CPL), it does not cover all information as required in the benchmark. CPL requires disclosure of trusts in which the declarant or family member is an ultimate beneficial owner (controller). According to the definition of the Law on Anti-Money Laundering, it means the founder, trustee, protector (if any), beneficiary (beneficiary) or group of beneficiaries (beneficiaries), as well as any other natural person who exerts a decisive influence on the activities of the trust (including through the chain of control/ownership). This meets the requirement to include disclosure of trusts to which the declarant or family member have "any relation." However, neither the law, nor the procedure for filling the asset declaration or the form's template[28] require the identification details of the trust's settlor, trustees, and beneficiaries if they are not the trust's controller (that is the declarant or family member). It means that other people related to the trust in which the declarant or family member is an ultimate beneficial owner (controller) are not disclosed in the form. **For this reason, Ukraine is not compliant with the element D of the benchmark.**

Benchmark 2.3.4.

	Compliance
The legislation or official guidelines require the disclosure in the declarations of information on assets, income, liabilities, and expenditures of family members, that is, at least spouse and persons who live in the same household and have a dependency relation with the declarant	X

Under the CPL, public officials are required to disclose the assets, income, and liabilities of their family members. However, the law does not mandate the disclosure of family members' expenditures, therefore **Ukraine is not compliant with the benchmark**. The CPL defines family member as follows in line with the benchmark:

a) Spouse of the public official and official's children until they reach the age of majority, regardless of their cohabitation with the public official.

b) Individuals who live together, share common household, and have mutual rights and obligations with the public official (excluding individuals whose mutual rights and obligations are not of a family nature). This includes unmarried individuals who live together.

27 Section IV item 16 of the Procedure for Filling out and Submitting a Declaration of a Person Authorized to Perform the Functions of the State or Local Self-Government, approved by the Order of the NACP No. 449/21 dated 23/07/2021

28 https://zakon.rada.gov.ua/laws/show/z0987-21#Text.

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	✓

Asset declarations are submitted through a user-friendly online platform, the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-Government (Register) accessible at https://portal.nazk.gov.ua/login. To access it, individuals need to register using an electronic signature issued by an accredited key certification centre in accordance with the law. Once registered, declarants can use their accounts in the Register to generate drafts asset declarations, enter information, save draft versions, and submit the final declaration electronically. Submitted declarations can be used as a template in future, simplifying the process for subsequent submissions.

Public officials had an uninterrupted access to the Register and were able to submit their annual declarations in the reporting period. According to the NACP a total of 228 085 declarations were submitted in 2022. The fact that a considerable number of filers chose to submit asset declarations despite the suspension of the obligation to declare, is a demonstration of a growing culture of integrity in Ukraine.

To further ease the process of submission of declarations, Ukraine introduced an automatic transfer of information from government datasets to the draft asset declarations by law. While asset declarations will be automatically pre-filled, the officials will continue to bear the responsibility to provide accurate and reliable data. This feature is yet to be added to the system.

There is an exception from a general rule of online submission of declarations applied to the staff of intelligence agencies and officials working in classified positions. Their declarations must be submitted in a way that prevents the disclosure of their affiliation with the relevant state bodies or military formations (Art. 52-1 CPL). The monitoring team could not review the relevant procedures as they are classified. Nevertheless, based on the information received during the on-site visit, declarants falling under this exception seem to be submitting paper declarations.

Non-government stakeholders continue to express concerns that as declarations from these individuals may be submitted in paper form, this may potentially lead to a misuse of the restrictions that should be applied to designated categories and not all the staff of the relevant agencies. They suggest that all such submissions should be made electronic, and that the law should be amended to give NACP powers to define specific positions within each relevant government agency that would qualify for a special procedure.

According to the authorities, the Action Plan includes measures transitioning to the electronic submission of declarations for the special category, eliminating potential errors and biases. Additionally, the unit responsible for verifying declarations of intelligence officers has been monitoring these declarations for any misuse of the special procedure by unauthorized employees of security and intelligence services. The NACP reported several cases of unauthorised employees of the Security Service submitting their declarations under the special procedure (Article 52-1) instead of following the general rules. In response, the NACP required them to submit declarations to the general system and charged them with administrative protocols for late submission.

To help build trust in the system of submission of asset declarations by this special category of declarants, the monitoring team reiterates the recommendation of the pilot report for NACP, to proactively share with the public selected unclassified information (e.g., statistical data) on its efforts of verifying declarations submitted by the special category and identifying any attempts to misuse the special system. This

transparency can help demonstrate NACP's commitment to fair and effective implementation of asset declaration procedures and contribute to an increased public confidence in the process.

Given the system for online submission of asset declarations has been in place and accessible to public officials, despite the suspension of the requirement to submit declarations during Martial Law, and that many public officials submitted asset declarations nevertheless, **Ukraine is compliant with the benchmark.** At the same time, the monitoring team reiterates the need to restore the obligation to declare as soon as possible.

Benchmark 2.3.6.

Information from asset and interest declarations is open to the public:

Element	Compliance
A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect the privacy and personal security	X
B. Information from asset and interest declarations is published online	X
C. Information from asset and interest declarations is published online in a machine-readable (open data) format	X
D. Information from asset declarations in a machine-readable (open data) is regularly updated	X

As the public access to declarations continued to be suspended in the assessment period, the **elements of the benchmark are not met.**

Since the introduction of the Martial Law, the NACP restricted public access to the Register, citing security risks to public officials, especially those located in the occupied territories, without a legal basis for this decision. While in March 2022, the government temporarily allowed the closure of the access to state electronic registers and databases, this regulation was amended in December 2022, specifying that the suspension of operation for public electronic registers is only applicable to the occupied territories and areas with active combat operations. The law opening public access to asset declarations was passed in September 2023 outside the assessment period. It provides for an exemption from public access to declarations of specific officials in relation to Martial Law.

The following section describes the system in law and in practice before the Martial Law.

Asset declarations are subject to a public disclosure by default. The information not disclosed publicly includes certain personal data, namely tax ID number, passport number, unique number in the Unified Demographic Register, address of residence, date of birth, bank account number, and detailed address of immovable property, except for region, city, or village where it is located (Art. 47 CPL).

The declarations are published online automatically immediately after the submission and are available in machine-readable format. According to NACP, the information of the public Register available through an application programming interface (API) is usually updated every 30 minutes, ensuring access to the up-to-date data. It is also available as a JSON file which is a machine-readable format.

However, there is an exception for declarations of intelligence and counter-intelligence officials (Art. 52-1, CPL). These declarations are not available publicly with the exemption of declarations of officials appointed and dismissed by acts of the President of Ukraine and the Verkhovna Rada of Ukraine whose appointment does not constitute state secret. As highlighted above, stakeholders also maintain that non-disclosure may

not be limited in practice to the specific officials and also include those employees whose appointment is a public information, due to the lack of a detailed list of officials to which special rules should apply.

The benchmark does not require publication of declarations of classified positions or declarations containing classified information, but it requires that the exemption should not extend to the officials, whose appointment in the intelligence or security bodies is a public information. Legislation should identify positions of cases when the declarations are filed under the specific requirements.

The monitoring team calls on Ukraine to reinstate the public access to the register as it existed before the war. The principles of transparency and accountability must be upheld to prevent rolling back of the achievements of a robust asset and interest disclosure system in Ukraine.

Benchmark 2.3.7.

Functionalities of the electronic declaration system include automated cross-checks with government databases, including the following sources:

Element	Compliance
A. Register of legal entities	✓
B. Register of civil acts	✓
C. Register of land titles	✓
D. Register of vehicles	✓
E. Tax database on individual and company income	X

The electronic declaration system in Ukraine has automated access to 16 state registers, including most of those required under the benchmark. The only exception is the tax database of company income, **therefore all elements of the benchmark are met except the element E**.

The Register of declarations allows for automated access to information from other state bodies' registers and databases. It performs various functions such as comparing information in a declaration with data from other sources, generating risk assessments for each declaration, and ranking declarations based on risk ratings. These risk assessments serve as criteria for initiating full verifications of declarations.

The NACP obtains automated access to information from other registries and databases through bilateral agreements with the respective owners or administrators. The information is transmitted securely through communication channels that comply with information protection and personal data protection laws. This functionality is available to the NACP staff while they perform different procedures, including full verification.

Indicator 2.4. There is unbiased and effective verification of declarations with enforcement of dissuasive sanctions

Background

NACP is responsible for verification of asset declarations in Ukraine in line with CPL and secondary legislation. The agency performs accuracy checks (for “correctness and completeness”), logical and arithmetic control of declarations, lifestyle monitoring and full verifications. It also provides for special

checks of declarations to the appointing agencies for the appointment to specific public offices. [29] In 2021, the NACP had split the accuracy checks into two processes – "correctness" and "completeness" checks – introducing a new procedure referred to as "short verifications" aimed at identifying false and incomplete declarations (see benchmark 2.4.4).

For the purposes of this indicator, "verification" means an in-depth analysis and review of the declaration that goes beyond basic checks of timeliness and completeness.[30] In Ukraine, short verifications and full verification qualify as such.

Criminal, administrative, and disciplinary sanctions are envisaged for violations related to asset declarations. NACP has a jurisdiction for detecting and referring administrative offences committed by high-level officials to the court for sanctioning, and the National Police is responsible for detection of the rest. When NACP identifies evidence of a criminal offence, it refers the case to the National Anti-Corruption Bureau of Ukraine (NABU) for public officials holding high-level positions, or to the National Police for all other instances. Cases of unjustified assets subject to civil confiscation are referred by the NACP to the Specialized Anti-Corruption Prosecutor's Office (SAPO). Following the decision of the Constitutional Court of Ukraine (CCU) invalidating relevant legal grounds for verifications in 2020, fully restored in 2021, many ongoing verifications have been terminated.[31] Verification function has been suspended during the Martial Law, but NACP has preserved the function of lifestyle monitoring. In September 2023, the law restored NACP's verification mandate.

Assessment of compliance

Ukraine developed a complex, multi-phased framework of risk-based verification of declarations primarily focused on high-level officials and NACP possesses the capacity to verify them, including the powers to access registers and various databases. At the same time, there is a relatively low track record of sanctions for violations and the effectiveness of the end-to-end process is questionable. Despite the NACP's referrals of potential violations, courts only impose sanctions in a few cases. The verification, enforcement, and dissuasive sanctions are instrumental for any progress in this area, therefore, Ukraine is encouraged to ensure unhindered risk-based verification of declarations with a focus on high-level officials. The verification process must be streamlined in line with the law, avoid overlaps, ensuring coordination and cooperation within the NACP and with other relevant agencies. Transparency of verification and its results must be ensured to rebuild public trust to verification of asset declarations in Ukraine.

29 Negative findings may result in non-appointment. In the context of promotion to the higher position within public administration, the special check may identify violation that triggers administrative or criminal liability. The special checks were suspended for the period of Martial Law.

30 Guide, page 32: "an in-depth analysis and review of the declaration that goes beyond checking whether the declaration was filed on time and whether the form is complete, and all required fields have been filled in" -

31 Verifications were terminated for declarations submitted in 2020 and earlier. According to the pilot report, 555 verifications have been terminated, 5 administrative and 6 criminal sanctions had to be cancelled due to CCU Decision

Benchmark 2.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency, unit, or staff and is implemented in practice:

Element	Compliance
A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%) OR	100%
B. Verification of declarations is assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations and is responsible only for such verification and not for other functions (100%)	

In Ukraine, verification of asset declarations is assigned to dedicated units of NACP, that have clearly established mandate to verify declarations, and do not perform any other functions. In 2022 there were two separate units: the Department of Full Verifications and the Department of Mandatory Full Verifications, which had similar functions. In the first half of 2023 these were merged into a single unit comprising 33 staff responsible for full verifications. Another unit was established to conduct "control of completeness" and lifestyle monitoring, consisting of 19 staff members, with five dedicated to controlling the completeness of declarations.[32] At the same time, according to the stakeholders that responded to the questionnaire, some of the highly qualified employees of the dedicated units resigned. The staff were also involved in the work related to the sanctions policy, and that this impacted the NACP's resources. In addition, according to CSOs, many qualified staff left the agency in the assessment period.

The NACP's core powers to verify asset declarations have been suspended in times of war as explained above. Still, in the reporting period, NACP has performed some of its verification functions: full verifications and short verifications were conducted in the beginning of 2022 (see benchmark 2.4.2-2.4.4) and NACP continued to perform lifestyle monitoring in the full reporting period. **Ukraine meets the higher standard of this benchmark (element B).**

Non-governmental stakeholders have raised concerns that the verification of declarations of intelligence and counterintelligence personnel, and classified positions within law enforcement agencies are handled by the NACP's Internal Control unit and not the dedicated units mentioned above.[33] This does not correspond to the unit's mandate as articulated in the CPL. These concerns were echoed in the recently published an independent external assessment of NACP.[34]

The monitoring team has questions as to the effectiveness of the organisation of the verification process, use of available resources, coordination between various verification functions and the overall results of verification. While frequent changes of the verification system do not contribute to a sustained impact, the existing regulations and practices require streamlining in line with the CPL, to best meet its objectives of detecting violations for the necessary follow up. These issues will be further examined in the future

32 The lifestyle monitoring gained more importance in 2022 and 2023, as it is the only financial control procedure which the law allows to conduct during Martial Law. In the absence of submitted declarations the monitoring is used to analyse specific facts concerning public officials (luxury place of residence, etc) and to refer cases to law enforcement for further investigations of possible illicit enrichment or unjustified assets. It remains to be seen how this tool will evolve after the restoration of core NACP functions to conduct full verifications of submitted declarations.

33 As part of this mandate the Internal control Unit also conducts full verification of asset declarations submitted by the NACP staff.

34 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

monitoring, after the verification functions and practices are resumed in Ukraine (see also the benchmark 2.4.4).

Benchmark 2.4.2.

Verification of asset and interest declarations, according to legislation and practice, aims to detect:

Element	Compliance
A. Conflict of interest (ad hoc conflict of interest or other related situations, for example, illegal gifts, incompatibilities)	✓
B. False or incomplete information	✓
C. Illicit enrichment or unjustified variations of wealth	✓

In Ukraine, full verification of asset declarations is aimed at identifying false or incomplete information, conflict of interest, illicit enrichment, and unjustified assets (Art. 51-3 CPL). In 2021, the NACP conducted 1,043 full verifications, targeting a similar number for 2022. However, due to the suspension of verifications during the Martial Law, the NACP conducted only 124 full verifications in 2022. In January-February 2022, NACP identified 84 cases of false or incomplete information, which could indicate commission of administrative or criminal offence (they were referred to courts or law enforcement agencies depending on jurisdiction). Also, in six cases NACP has identified signs of unjustified assets and referred these cases to the SAPO. One case of incompatibility has been identified in the process of verifications within the reporting period, with several other similar cases identified for an earlier period.[35] **Ukraine is compliant with all three elements of the benchmark.**

In addition, a new form of "completeness check", so-called "short verification" the NACP put in place in 2021, having split the function of the "control of completeness and correctness of declarations" provided by CPL into two different procedures[36] (see benchmark 2.4.4), targets the detection of false or incomplete information according to the authorities.[37] In January – February 2022, the NACP conducted only 13 short verifications and identified 10 cases of potential administrative or criminal offences of false or incomplete declarations. In 6 cases pre-trial investigation is ongoing and one case resulted in an administrative sanction. It is not possible to determine what happened with three cases due to the war.

35 Statistics of 2021 demonstrates NACP capacity for 12 months. In this year, as a result of full verifications, NACP detected 308 cases of false or incomplete information, which could indicate commission of administrative or criminal offence. It has also detected 10 cases with signs of unjustified assets and 1 possible case of illicit enrichment. Three cases of violations of restrictions on compatibility and concurrent employment were identified as a result of full verifications in 2021.

36 Some stakeholders believe that such split has no legal basis and contradicts the CPL. Independent external assessment of NACP concluded that the the new procedure is illegal. https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

37 Article 51-1 of the CPL provides "control of completeness and correctness of declaration."

Benchmark 2.4.3.

A dedicated agency, unit, or staff dealing with the verification of declarations has the following powers clearly stipulated in the legislation and routinely used in practice:

Element	Compliance
A. Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities	✓
B. Have access to registers and databases which are held/administered by domestic public authorities and are necessary for the verification	✓
C. Access information held by the banking and other financial institutions: with prior judicial approval (50%) or without such approval (100%)	100%
D. Have access to available foreign sources of information, including after paying a fee if needed	✓
E. Commissioning or conducting an evaluation of an asset's value	✓
F. Providing ad hoc or general clarifications to declarants on asset and interest declarations	✓

Legislation provides the dedicated staff of the NACP with all powers listed in the benchmark, including:

- Requesting and obtaining information, including classified information, from public authorities, entities, and private individuals (Item 1-1, part 1 Article 12, para 4, Part 1, Article 13 CPL).
- Having direct automated access to registers and databases administered by public bodies (Item 1-2, part 1 Article 12 CPL).
- Receiving requested information from banking institutions without prior judicial approval (Item 3 Part 1 Article 62 of the Law "On Banks and Banking Activities"). (Compliance 100%)
- Accessing information from available foreign registers and databases, including after paying a fee if needed (Item 2-2 Part 1 Article 12 CPL).
- Referring to experts and specialists to determine the market value of declared assets as of the date of their purchase (Para 2, Item 14, Section II, Procedure for Full Verification of the Declaration of a Person Authorized to Perform the Functions of the State or Local Self-Government).
- Providing clarifications (ad hoc or general) to public officials on matters of financial control (Item 15, part 1 Article 11 CPL).

Despite the suspension of verification of asset declarations during the reporting period, in the period when verification was operational Ukraine demonstrated compliance with all elements of the benchmark. In 2022 full verifications were conducted only in January and February. In this period, in 5 cases of full verifications information was requested and obtained from different third parties. In 137 cases the NACP also accessed government registers when conducting the full verification. At least in 5 cases the NACP staff requested and accessed information from banking institutions. In 3 cases the NACP sent requests to foreign jurisdictions to obtain needed information. Although the law allows receiving information after paying a fee, in all presented cases the NACP submitted direct requests to government or business entities. In 4 cases in 2022 the NACP requested the Kyiv Scientific Research Institute of Forensic Expertise to assess the value of declared assets, including land plots, apartments, garages, and vehicles. As the function of providing clarifications to declarants was not suspended during the war, in 2022, the NACP issued 26,466

clarifications on asset and interest declarations, consisting of three general guidelines and 26,463 individual clarifications. Therefore, **all elements of the benchmark are met in the assessment period.**

Non-governmental stakeholders expressed criticism that the NACP relies only on the Kyiv Research Institute of Forensic Examinations to determine the market value of declared assets and suggest expanding the involvement of expert institutions. The NACP reported that in July 2023 it has concluded an agreement with a private company for provision of services related to assessment of the value of assets. Stakeholders also recommend allocating more funds for a regular access to paid data from foreign registers and advocate for the NACP to actively engage with foreign competent authorities bilaterally and participate in relevant international initiatives to facilitate international data exchange for the verification of property declarations.[38]

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

Element	Compliance
A. Declarations of persons holding high-risk positions or functions	✓
B. Based on external complaints and notifications (including citizens and media reports)	✓
C. Ex officio based on irregularities detected through various, including open sources	✓
D. Based on risk analysis of declarations, including based on cross-checks with the previous declarations	✓

The law prescribes verification of declarations listed in elements A-D and NACP verifies these declarations in practice through full verifications. A procedure for the selection of declarations for full verification is adopted as a Regulation of the Head of the NACP and it has a recommendatory nature. According to the regulation, each subsequent declaration that undergoes full verification should belong to the following categories in the specified order. If, at a given moment, there are no declarations available within a particular category, the declaration from the next category in the sequence is referred to for full verification. These categories are:

1. Declarations that have been fully verified in the past, but new evidence is received indicating possible illicit enrichment, unjustified assets, or intentionally false information in the submitted declaration.
2. Declarations submitted by high-level officials or officials holding high-risk positions, as defined by the legislation, and established by the NACP.
3. Declaration with the highest risk score based on the the logical and arithmetic control (LAC).
4. Declarations that are the subject of external complaints, including those from the media and citizens, indicating possible criminal offences related to intentionally false information, illicit enrichment, or unjustified assets.
5. Declarations that are the subject of external complaints, including those from the media and citizens, indicating possible administrative offences related to intentionally false information.

38 In 2021 report NACP acknowledged that only in 18% of the requests for information sent abroad they received reasonable responses.

6. Declarations that show irregularities between the declared assets and the individual's lifestyle, as identified through lifestyle monitoring by NACP staff.

For 2022, specifically the period, when the verification was ongoing before its suspension, the NACP reported the following statistics:

- 72 verifications of declarations of persons with high-level and high-risk positions;
- 16 verifications initiated by external complaints and notifications;
- 5 verifications prompted by identified irregularities in lifestyle monitoring;
- 44 verifications based on risk analysis, a high-risk determined by LAC.[39]

To conclude routine application in practice, the monitoring team must establish at least three relevant cases for each element in the reporting period and Ukraine has provided these case examples. **Therefore, all elements of the benchmark are met.**

At the same time, the monitoring team deems it necessary to highlight various concerns related to the verification of asset declarations, raised during the monitoring, which may impact the practice under this benchmark. These concerns relate to the lack of transparency of regulations related to the verification of declarations, verification of declarations of the staff of the classified positions, the new procedure of "short verifications" and lifestyle monitoring (see also the section Assessment of Non-Governmental Stakeholders below). The law explicitly prescribes that NACP should adopt regulations on all financial control mechanisms prescribed by the law.

Non-government stakeholders criticize that after 2021 NACP is not disclosing the document regulating the logical and arithmetic control (LAC) procedure, used to compute risk assessment for each declaration. According to NACP, this document is now designated for a restricted use as it was reclassified by an expert institution as a file containing configuration parameters of the software of the Register. The procedure was open to the public before, and the grounds and justification for restricting access to it are questionable.

Non-government stakeholders also criticize the procedure of verification of declarations of the staff of the intelligence agencies and officials working in classified positions. Given that these declarations are submitted in a paper form, they are not subject to the LAC procedure. These declarations are handled by the NACP's Internal Control unit, which does not have this mandate under the CPL as mentioned above in the benchmark 2.4.1. The former Head of the Unit was a former Security Service officer which raises doubts about the impartiality of managing the verification process.[40]

Furthermore, the new procedure of short verifications has sparked a significant controversy among non-governmental stakeholders. It involves two stages and takes around 40 days (compared to full verification that takes around 120 days). Firstly, an automatic comparison is made between the information provided in the asset declaration and data from other government databases to identify any inconsistencies. Then the NACP staff manually analyse detected inconsistencies and either submit an administrative case to a court or refer a case to the relevant law enforcement bodies depending on the nature and scope of the identified false information and the position of the official involved. This means that each submitted declaration goes through two different set of assessments: an automatic cross-check with the information from government registers to calculate the "degree of completeness of declaration information" to rank them for short verification; and LAC, to assess risks, rank declarations for verification based on such risks

39 For 2021, the NACP reported that 671 verified declarations which were submitted by persons holding high-level and high-risk positions, 186 verifications which were triggered by external complaints and notifications, 14 verifications which were triggered by identified irregularities in the process of lifestyle monitoring, and 197 verifications which were conducted due to the high risk score as a result of logical and arithmetic control of a declaration.

40 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

and determine the need for full verification. According to the authorities, the updated LAC procedure does not include a comparison of declaration data with other registers, as this step is performed exclusively within “short verifications”.[41] The LAC procedure is not open for public access.

Non-governmental organisations believe that short verification allows NACP to avoid full verification of declarations, simply by identifying “red flags” and sending this information to the law enforcement agencies.[42] (See also the section Assessment of Non-governmental Stakeholders). The recently published independent external assessment of the NACP found that short verifications overlap with full verification of declarations and contradict the CPL.[43]

The NACP contends that the new procedure complements full verification, saves time, broadens the scope of verifications, and improves the NACP's ability to identify false information in asset declarations. According to the authorities, short verifications in principle do not overlap and are complementary to full verification, which is triggered based on specific grounds (see above), such as risk-based prioritisation though LAC. In case of an overlap, procedure for short verifications establishes a clear hierarchy between the two types of verification. Declarations that undergo full verification cannot be subjected to "short verification." However, during the "short verification" process, if there are indications of severe violations, the NACP staff may suspend the procedure and refer the case for full verification. The NACP believes that this mitigates the concerns of non-government stakeholders. The law enforcement authorities met during the on-site visit did not see any major difference in terms of the cases referred to them by NACP based on short or full verifications, explaining that in any case law enforcement authorities need to carry out their own investigations based on the received material. Therefore, in their view a less resource-intensive version would meet the need to identify signs of a violation (in case of short verifications this is false or incomplete declarations) and refer the case accordingly.

The effectiveness of the existing mechanism of verification has yet to be seen in practice by a robust track record of cases. Once the function is reinstated in full, the NACP is invited to reassess it in the light of these concerns, bringing clarity, and predictability to the verification of asset declarations (see also benchmark 2.4.1).

41 According to the NACP’s external assessment report LAC does not apply to the declarations submitted under Art. 52-1, CPL.

42 https://antac.org.ua/en/news/new-examinations-of-declarations-by-nacp-compliance-risks/

43 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf Page 89. “the NACP artificially split the united (as stated in the LCP and this criterion) procedure into two separate procedures – control of correct and control of complete filling-in of declarations. This unjustified multiplication of procedures creates ambiguity contrary to the legal certainty principle, overlaps with the general procedure of the full verification of declarations, and contradicts the LCP.

Benchmark 2.4.5.

The following measures are routinely applied:

Element	Compliance
A. Cases of possible conflict of interest violations (such as violations of rules on ad hoc conflict of interest, incompatibilities, gifts, divestment of corporate ownership rights, post-employment restrictions) detected based on the verification of declarations and referred for follow-up to the respective authority or unit	x
B. Cases of possible illicit enrichment or unjustified assets detected based on the verification of declarations and referred for follow-up to the respective authority or unit	✓
C. Cases of violations detected following verification of declarations based on media or citizen reports and referred for follow-up to the respective authority or unit	✓

In 2022 the NACP identified one case of violation of rules on incompatibilities as a result of full verification of declarations (the benchmark requires at least three cases to qualify for "routine" application of measures). In six cases where verifications indicated signs of unjustified assets, NACP referred them to SAPO for a follow up. Additionally, in 14 verifications[44] violations were detected based on media or citizens reports. The NACP transferred these cases to the relevant law enforcement agencies or units within the NACP for the follow-up. No information is available about the results of the law enforcement action in these cases. Ukraine is compliant with the **elements B and C** but **not A** of the benchmark.

Benchmark 2.4.6.

The following sanctions are routinely imposed for false or incomplete information in declarations:

Element	Compliance
A. Administrative sanctions for false or incomplete information in declarations	✓
B. Criminal sanctions for intentionally false or incomplete information in declarations in cases of significant amount as defined in the national legislation	✓
C. Administrative or criminal sanctions on high-level officials for false or incomplete information in declarations	✓

Ukraine's record of sanctions for violations related to asset declarations is relatively weak. Although the NACP consistently identifies signs of potential violations and refers cases for further action, sanctions are rarely imposed.

In 2022, the NACP transferred 11 cases of possible administrative violations involving the intentional false information in declarations (for public officials in responsible positions) to the court. Additionally, they referred 16 cases to the National Police. The NACP reported only 2 court decisions with first-instance courts finding public officials guilty of committing this administrative offence. These two individuals were fined UAH 17,000 each (about EUR 435). One case was closed due to expiration of the deadline for

44 62 cases in 2021.

imposing administrative sanctions, another one was returned to the NACP by the court after the expiration of the deadline for imposing administrative sanctions. Four cases were closed by courts due to the absence of elements of an administrative offence. Three other cases were in judicial proceedings at the time of the monitoring visit. In one case referred to the National Police, in March 2022 the court sanctioned one individual with fine of UAH 17,000 (about EUR 435). At least in two other cases the court found individuals guilty in committing an administrative offence but closed proceedings because of the expiration of statute of limitations. Based on the provided information, **Ukraine is compliant with the element A of the benchmark** with three reported cases of applied administrative sanctions.

The NACP has also reported about three criminal cases investigated by the National Police, in which individuals were sanctioned for submitting false information in their asset declarations in 2022 – first half of the 2023. All three cases concern representatives of the local government. In one case the plea agreement was concluded with the sanction of 150 hours of community service and prohibition of holding elected positions in local self-government bodies for the period of one year. In two other cases individuals were sanctioned to fine of UAH 51,000 (EUR 1,300) with similar prohibition of holding elected positions in local self-government bodies for the period of one year. In all cases court decisions entered into force, while one of them is being contested by the individual in cassation criminal court. The data on other cases referred by the NACP to the National Police is not available.

In one case investigated by the NACP, an administrative sanction for submitting false information in asset declarations was applied to a high-level official. In June 2022, a prosecutor from the Zakarpattia Regional Prosecutor's Office was sanctioned with the administrative fine of UAH 17,000 (as described above) for providing inaccurate information amounting to UAH 357,718.91 (about EUR 9,170). The appeal court left the decision of the first instance court in force. In 2022 criminal sanctions have not been applied to high-level officials for false or incomplete information in their declarations However, in the first half of 2023 in 2 cases the first instance court found members of Ukrainian Parliament guilty for providing false information in their declarations. In the first case, the MP provided inaccurate information amounting to UAH 3,700,000 (about EUR 94,870), which included undeclared leased apartment and part of non-residential premises that belonged to them on the right of ownership in 2020. In the second case, the MP provided inaccurate information amounting to UAH 2,500,000 (about EUR 64,100), which included undeclared leased apartment. These cases were closed by the appeal court due to the statute of limitations. Given that for criminal sanctions the benchmark takes into account the first instance court sentences, and that this report provides assessment for Ukraine's performance in 2022 and the first half of 2023, **Ukraine is also compliant with the elements B and C of the benchmark (with total of 5 cases of applied sanctions for the element B and three reported cases for the element C).**

Regarding the lack of effectiveness of administrative sanctions, both non-government stakeholders and the NACP point to legislative shortcomings that need to be addressed. These include the NACP's limited powers to present administrative cases in court or appeal court decisions, as well as a short statute of limitations for corruption-related administrative offences. The NACP has also proposed a legal initiative to transfer the review of administrative cases against high-level officials to the High Anti-Corruption Court (HACC) to ensure timely and impartial review, but this is controversial due to the high case load of HACC.

Box 2.1. Asset and Interest Disclosure in Ukraine

Ukraine`s comprehensive system of assets and interest disclosure is recognized by its citizens and the international and non-governmental stakeholders as one of the key instruments to prevent corruption. Despite many challenges that the system faced in the past and the current suspension during the Martial Law, it remains one of the most promising asset and interest disclosure systems around the world[45]. For the period covered by the monitoring, three features of the system stand out:

The first one goes beyond the mandatory minimum and outline excellence in the public service system. Due to the war, all Ukrainian public officials were exempted from the obligation to disclose, the deadline being postponed 90 days after the end of the Martial Law. Still, in 2022 more than 228.000 declarations were submitted voluntarily which showcases commitment to integrity principles even in times of adversity and the ease of using the system by declarants.

The second one refers to the interconnectivity of the electronic declaration system with 16 state registers which allows for automated crosschecks. This feature has a merit of enhancing the effectiveness of the verification process and may constitute a good practice example for countries that seek to transition into full automation. The NACP has also tested the functionality of retrieving data from external registers during the filling out the form by the declarant to make the submission process even easier and prevent mistakes.

The third one refers to the legal provisions that institutes the obligation to disclose beneficial ownership of companies and indirect control of assets other than companies. There are not many countries that implemented such disclosure requirements that go beyond what is owned in the name of the filer, their spouse and dependent children. The benefits for adding beneficial ownership in the declaration will definitely make it harder for officials to distance from what thy actually own, thus contributing to a higher trust in the public sector. In addition, the form requires disclosure of assets that are not formally or informally owned but also assets used by the declarant or family member.

Assessment of non-governmental stakeholders

Although non-government stakeholders have provided critical feedback on how the government handles asset disclosure, there is a consensus that the main priority for Ukraine at present is the restoration of the asset declaration system, despite the ongoing Martial Law. Non-government stakeholders believe it is crucial to fully restore the system, which includes not only the functions of submission and verification of declarations but also their public disclosure, with possible additional narrowly defined temporary exemptions for certain information due to security considerations. They strongly believe that a prolonged suspension of asset declaration obligations will hinder the progress in anti-corruption reforms.

While there is an agreement on preserving and further developing the existing asset declaration system, non-government stakeholders have raised practical issues and disputes with the approach to asset verification taken by the NACP in 2020-2021. As mentioned earlier, some of the debated issues include

45 As it was highlighted by the authors of the dedicated chapter on Ukraine in the 2021 World Bank publication “Enhancing Government Effectiveness and Transparency: The Fight Against Corruption”, https://www.worldbank.org/en/topic/governance/publication/enhancing-government-effectiveness-and-transparency-the-fight-against-corruption.

the submission and verification practices of intelligence and security agencies' staff, non-disclosure of the LAC rules, and the new procedure of "short verifications".[46]

According to civil society representatives that took part in the monitoring, the system of verification of asset declarations should be streamlined to reduce its complexity and to increase its effectiveness and efficiency.

In view of civil society short verifications have led to a reduction in the scope of the logical and arithmetic control (LAC) of declarations. Consequently, there is a possibility that declarations which would have previously qualified for full verifications may now be directed to the "short verification" procedure. This raise concerns that the "short verification" may only uncover minor violations, while potentially failing to identify more significant wrongdoings that would have been detected through the comprehensive process of full verification. Critics argue that this procedure diverts resources from detecting more serious violations such as illicit enrichment, unsubstantiated assets, and conflicts of interest. They believe it primarily focuses on identifying cases where public officials fail to submit information available in other government registries.[47] Stakeholders have an expectation that short verifications will be abolished.

Non-government stakeholders are also skeptical about the lifestyle monitoring performed by the NACP. They support the use of this tool during Martial Law given that it is the only measure of financial control NACP can currently perform. However, once Martial Law is over, they are not convinced there is a need to continue using this tool, given that the NACP still does not have proper regulatory framework for it. Some civil society stakeholders believe that the procedure of the lifestyle monitoring extensively overlaps with the full verification of asset declarations. According to the independent external assessment of NACP, the procedure involves interference in the realization of human and citizen rights and freedoms guaranteed by the Constitution of Ukraine and the ECHR.[48]

From the perspective of non-government stakeholders, other problematic issues include the adoption of the law to introduce a mechanism for automatically sanctioning public officials for late submission of asset declarations with ex-post judicial control. The law, awaiting the President’s signature, is criticized for lacking sufficient procedural safeguards for defendants and imposing strict 72-hour time limit for presenting evidence of valid reasons for late submission. Furthermore, in many instances the late submission of asset declarations cannot be automatically identified. Consequently, if enacted, this new mechanism for identifying late submission of declarations may lead to numerous false-positive and false-negative outcomes. This law excludes individuals who commit the administrative offence of providing false information in asset declarations from being listed in the Unified Register of Persons who Committed Corruption Offences.

Regarding resources, in addition to diversion of resources of NACP due to the war pointed out under PA 1 (section Assessment of Non-Governmental Stakeholders), hampering NACP's ability to fulfil its core mandate, CSOs reported that many qualified staff left the agency in the assessment period.

46 https://ti-ukraine.org/en/news/nacp-s-new-quick-declaration-checks-law-compliance-and-risks/

47 Another line of criticism of this procedure is that it does not fully complies with LCP provisions: Article 51-1 of LCP provides for “control of the completeness and correctness of declaration” as a one separate type of control. This was the case until 2021, when NACP came with the new interpretation of the law and differentiated control of completeness of the declaration as a separate procedure. The Regulation on the procedure was passed in August 2021 and registered with the Ministry of Justice in September 2021.

48 https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/report-of-the-commission-for-conducting-independent-assessment-of-the-effectiveness-of-the-nacp.pdf

6 Independence of Judiciary

In Ukraine, judicial governance bodies are responsible for the selection, appointment, and dismissal of judges, but they were not fully operational in the reporting period. The continued status quo of numerous vacancies in the judiciary raises concerns for the access to justice. Judicial governance bodies have been formed through a competitive selection and since have been working largely transparently. Ukraine is urged to complete its legal and institutional framework to start merit-based judicial appointments as soon as possible, without compromising their quality. Judges elect court presidents, but the process is not competitive, or merit based. Undue influence of court presidents over judges, and over some important decisions in the judiciary, as well as manipulations to hold these positions beyond statutory terms, have persisted. The judiciary budget appears insufficient, but the remuneration of judges is set in the law and excludes discretionary payments. In Ukraine, grounds for disciplinary proceedings lack clarity, and decisions have not been substantiated in the past. The reform separated disciplinary investigation from decision-making, introducing a new mechanism of disciplinary inspectors, but the framework is yet to be put in practice and there is a backlog of some 11 000 disciplinary complaints against judges.

Figure 6.1. Performance level for Independence of the Judiciary is high

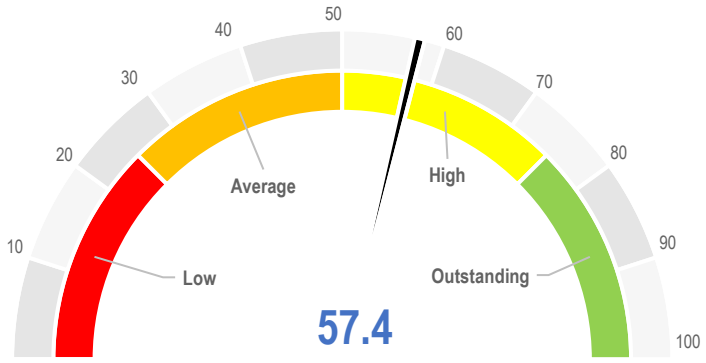
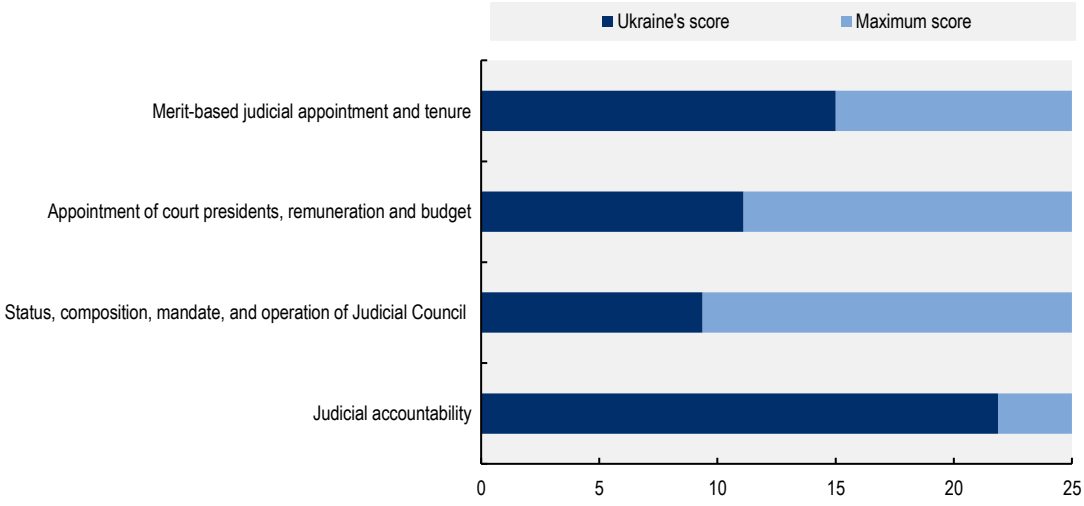


Figure 6.2. Performance level for Independence of Judiciary by indicators



Context

The reform of the judiciary has been ongoing in Ukraine for many years.[49] The 2016 constitutional reform strengthened the judicial governance bodies, repealed the probationary appointment of judges, introduced vetting of all judges, and reformed disciplinary proceedings. However, the lack of independent judicial governance bodies has been a continued challenge to the judicial independence and integrity as described

49 Venice Commission (Opinion No. 999 / 2020) highlighted fragmented, often rushed, non-holistic approach, to judicial reforms in Ukraine over the course of many years, lacking clarify and impact assessment (paras. 6-7) along with the lack of implementation after their adoption. "Following presidential elections, the new political power would often start new changes to the judicial system. In the absence of a holistic approach, various pieces of legislations were adopted that did not have the character of a comprehensive reform." "Due to the numerous unfinished and incoherent attempts to reform the judiciary, the Ukrainian Judiciary rests in a stage of transition." https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)022-e

in the pilot report. According to a 2017 GRECO report, the judiciary of Ukraine was "considered as weak, politicised, and corrupt, and dominated by a strong prosecution service headed by a political appointee."[50]

In 2021, a new reform package was adopted aimed at cleaning up and resetting judicial governance bodies dissolved in 2019 pending the reform. International experts were given a decisive role in the selection of new and vetting of existing members of these bodies, following a similar successful model of selection of judges for the High Anti-Corruption Court of Ukraine (HACC). These amendments were passed after several versions of drafts, Constitutional Court decisions blocking the reform, and the Venice Commission Opinions, following a joint effort of Ukraine's internal and external partners. The pilot report commended the amendments and encouraged their implementation.

Granting EU candidate status to Ukraine in June 2022 further boosted the judicial reform, as the European Commission singled out the reform of the selection of judges of the Constitutional Court,[51] as well as the continuation of the reform of the judicial governance bodies, as two of the seven priorities for Ukraine.[52]

Judicial reform is in the centre of attention of Ukrainian society. The authorities met during the on-site visit showed a commitment to the ongoing reform, the recognition of existing deficiencies and challenges, a strong will to make it a success, as well as openness to criticism, recommendations, and support. A concerted vision, aimed at cultivating a culture of integrity and accountability of judiciary in Ukraine seemed to be shared by key players including judicial governance bodies, their civil society member, judges, and the Parliament. The next step in the reform is for the new governance bodies to show that they deliver in the best interest of an independent judiciary, in an honest and accountable way. The stakeholders were hopeful that these bodies would live up to their tasks, and proof to be a new beginning for independent justice in Ukraine.

Indicator 6.1. Merit-based appointment of judges and their tenure is guaranteed in law and practice

Background

All judicial appointments were suspended in 2019 with the termination of powers of the judicial governance bodies pending the reform.[53] Two relevant bodies have now been formed (see Indicator 3) but some more regulations are pending for selection and qualification assessment for promotions and post-probation re-appointments to be resumed. At the time of the on-site visit, Ukraine was also resetting the Public Integrity Council[54] - a body composed of civil society representatives, mandated to assess integrity during the qualification assessment of judges. In Ukraine qualification assessment is used for vetting judges post-probation and for the appointments at higher instance courts (promotions).

50 GRECO (2017), Fourth Evaluation Round, Ukraine, para 111. http://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207

51 This is out of the scope of the IAP 5th Round of Monitoring Assessment Framework.

52 Disciplinary Inspectors Service (an independent structural unit operating in the Secretariat of the HCJ), while the Disciplinary Chamber of the High Council (formed from the members of the HCJ) judges the case and makes a decision.

53 Venice Commission Opinion No. 999/2020 "As concerns judicial vacancies, it seems that a large number of candidates had already been evaluated by the former HQCJ but their files could not be terminated because the HQCJ was dissolved with immediate effect on 7 November 2019. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)022-e

54 On August 14, 2023, a new composition of the Public Integrity Council was elected. https://grd.gov.ua/news/obrano-tretii-sklad-hromads-koi-rady-dobrochesnosti/

Selection, appointment, and qualification assessment methodologies have not changed since the pilot. A reform is ongoing to simplify selections (from up to 24 months process to 9 months), and overhaul criteria and methodology of ethics and integrity assessments, with the aim to apply a unified approach to such assessments used for all purposes: selection, promotion, and vetting of judges, and for the selection of members of the judicial governance bodies.

Judicial authorities seem to have a coordinated approach to the ongoing reform, planned to be finalised in autumn 2023, after which judicial appointments could be launched. Meanwhile, there are 2065 judicial vacancies, and 264 judges are awaiting qualification assessment following probationary period, they receive salaries but cannot adjudicate cases.[55]

Assessment of compliance

Merit-based appointment of judges and their tenure is guaranteed in law, but further regulations are needed to define clear criteria and methodology for integrity assessments carried out at various stages of the selection and qualification assessment processes. The judicial governance bodies are responsible for the selection, appointment, and dismissal of judges but they were not operational in the reporting period and the related practices of selection, promotion and dismissal have not been carried out. The continued status quo of numerous vacancies raises concerns for access to justice.[56] At the same time, there is need to strike a balance between filling out the vacancies as soon as possible and ensuring a proper, merit-based process. Now that the judicial governance bodies are in place, Ukraine is urged to complete its legal framework to complete merit-based judicial appointments as soon as possible, without compromising their quality.

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

Element	Compliance
A. Judges are appointed until the legal retirement age (100%) OR	0
B. Clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice (70%)	

The Constitution of Ukraine and the Law on the Judiciary and the Status of Judges (LJSJ) guarantee the appointment of judges until legal retirement age (65 years). While probation of judges was abolished in 2016, judges appointed before the reform for the initial term of five years, need to go through qualification assessment (for competences, professional ethics, and integrity) before their appointment until the legal retirement age. There are 264 sitting judges whose probation has expired. They receive salaries but are not authorised to adjudicate cases. [57] Therefore, Ukraine's system falls under the element B of the benchmark, until these qualification assessments are completed.

To conclude compliance with the element B, clear criteria, and transparent procedures for confirming in office following the initial (probationary) appointment of judges should be set in the legislation and used in practice. While the law regulates main steps of the process, making the procedure transparent, and results

55 There are total of 5044 sitting judges in Ukraine. High Anti-Corruption Court (HACC) has 38 judges and only one vacancy.

56 Link to Venice Commission Opinion

57 According to the Guide a country is compliant with one of the alternative elements A-B if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

are available online, criteria for assessing ethics and integrity are not clearly set in the legislation and used in practice.

The procedure for qualification assessment of judges is defined in LJSJ and further elaborated in the High Qualification Commission of Judges (HQCJ) regulations.[58] Qualification assessment includes an exam consisting of various tests and practical tasks,[59] including psychological and general skills tests, review of a judicial file and interviews. A rapporteur from among HQCJ members reviews the file, followed by an interview by a HQCJ panel, where the rapporteur presents the findings, and the judge has a right to add, clarify or object to the presented information. There is a high degree of transparency in the process of qualification assessment. The results are published, including dossiers with all relevant information and scores, indicating points under each component of the assessment.[60] Interviews are video broadcasted online and final decisions are also published. Thus, transparent procedures are set in legislation and applied in practice.

At the same time, the monitoring team is not satisfied that the clear criteria for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice, particularly, for assessing integrity.

The LJSJ defines criteria for assessing the qualification of judges including competences, professional ethics, and integrity (para. 20, chapter XII, LJSJ). Criteria on competences seem clear, but criteria for professional ethics and integrity lack clarity and precision. For example, one of the vague criteria for professional ethics is “compliance with behaviour that ensures trust to judicial post and authority of judiciary”.

Public Integrity Council - a body composed of 20 civil society representatives, selected at the conference of non-governmental organisations, including human rights activists, legal scientists, attorneys, journalists - carries out integrity assessments based on the indicators on integrity and ethics.[61] However, its conclusions are not mandatory in the selection process, and can be overruled by HQCJ, which, also decide on integrity of candidates. The HQCJ has further defined the criteria for integrity assessment but these lack precision and clarity. For example, one of them is the existence of the facts of liability of a judge for the commission of a misconduct or an offence that indicates the lack of his/her integrity. Furthermore, HQCJ regulation on qualification assessment provides that in case of non-compliance with integrity criteria the candidate gets 0 score, but no guidance is provided on what indicates such a “non-compliance”. In addition, after receiving the conclusions on recommended candidates from HQCJ, the HCJ can make its own determination of integrity, but criteria are not established for these decisions. There have not been any promotions in the judiciary since 2019.

HQCJ overruling the negative opinions of PIC without justification has been one of the areas of concern of the pilot report, along with the HCJ appointment of judges that were not successfully vetted. At the time of the on-site visit Ukraine was in the process of setting up a new composition of PIC[62] and amending regulations, to address the past shortcomings. The authorities informed that in all cases, where HQCJ recommended to lay off judges that did not pass the vetting, but HCJ refused to do so, these judges will have to go through the vetting anew. In addition, the vetting of all Supreme Court sitting judges is also proposed.

58 The same qualification assessment is used for promotion of judges (see Benchmark 1.5).

59 https://vkksu.gov.ua/sites/default/files/poriadok_new.pdf

60 https://vkksu.gov.ua/sites/default/files/poriadok_new.pdf

61 https://grd.gov.ua/wp-content/uploads/2020/12/Indykatory-HRD-vid-16.12.2020.pdf

62 The new composition is now in place since August 2023.

As clear criteria for confirming in office following the initial (probationary) appointment of judges are not defined in legislation, Ukraine is non-compliant with the element B of the benchmark.

The judicial authorities met during the on-site visit recognize these deficiencies. They explained that the law lacks clarity on what action, inaction or circumstances could serve as basis for non-compliance with the indicators of integrity and ethics, and how the points are allocated. The authorities stressed the need for overhauling the system and for using a unified approach in all assessments of integrity and ethics indicators, including during selection, promotion and assessing integrity of HCJ members. A joint work is ongoing to clarify relevant indicators, and develop clear criteria and methodology of the assessment, planned to be finalised in autumn 2023, after which judicial appointments could be launched.

The monitoring team commends the openness and reform-oriented approach demonstrated by judicial authorities during the on-site visit and encourages Ukraine to clarify criteria and process of integrity assessments, aimed at ensuring that judicial reappointments (as well as selection and promotions) are based on merit in practice, and perceived as such by Ukrainian society, which is essential to building trust towards judiciary.

Benchmark 6.1.2.

A Judicial Council or another judicial governance body plays an important role in the appointment of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly appoints judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	100%
B. The Judicial Council or another judicial governance body prepares a proposal on the appointment of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all candidates for judicial office and makes a justified recommendation to the relevant decision-making body (50%)	

Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.

The 2016 constitutional reform abolished the power of the Parliament to appoint judges, and political bodies do not have a decisive role in judicial appointments (and dismissals). The responsibility for judicial selection and appointments rests with judicial governance body – the High Council of Justice (HCJ) supported by another judicial governance body – the High Qualification Commission of Judges (HQCJ). HQCJ selects candidates and proposes them to the HCJ, which decides about candidates to propose to the President for the appointment. HCJ proposals to the President are mandatory and the President's role in the appointment is ceremonial. Thus, **the highest standard of the benchmark (A) is met**. At the same time, the grounds for rejecting candidates recommended by HQCJ as defined in the LJSJ (art. 79) are not clear, leaving a high degree of discretion to the HCJ in this process: one ground is "existence of reasonable doubt on compliance of candidate with criteria of integrity or professional ethics, or other circumstances that may negatively impact on public trust to judiciary in case of such an appointment". The monitoring team recommends clarifying the grounds and delineate the discretion of HCJ to reject candidates in the law.

Benchmark 6.1.3.

A Judicial Council or another judicial governance body plays an important role in the dismissal of judges, and the discretion of political bodies (if involved) is limited:

Element	Compliance
A. The Judicial Council or another judicial governance body directly dismisses judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%) OR	100%
B. The Judicial Council or another judicial governance body prepares a proposal on the dismissal of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%) OR	
C. The Judicial Council or another judicial governance body reviews all proposals for dismissal of judges and makes a justified recommendation to the relevant decision-making body (50%)	

Dismissal of judges is an exclusive power of the High Council of Justice, and political authorities do not have a role in dismissal of judges (Art. 131 Constitution of Ukraine). No dismissals were reported in the reporting period. **Ukraine meets the element A of this benchmark.**

Benchmark 6.1.4.

Judges are selected:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

The Constitution of Ukraine provides for a competitive selection of judges and the selection to the first instance courts is competitive and merit based except for integrity assessments that are not based on clear criteria and methodology. The selection includes an admission exam, special background check, training, qualification exam post-training, placing successful candidates in the reserve with ranking, announcement of vacancies, and recommendation of HQCJ to HCJ on the appointment followed by a decision of the HCJ to propose candidates for the appointment to the President and their appointment. The process takes up to 24 months from the start of selection to appointment. Venice Commission found it too complex and recommended simplifying it.

HQCJ publishes an online announcement with eligibility criteria and deadline for submission of applications (30 days). Any eligible candidate can apply. HQCJ then reviews and shortlists applications using eligibility requirements that includes five years of professional experience, as well as integrity. The assessment of competences includes testing for moral and psychological qualities and drafting skills, based on the established criteria and methodology. HQCJ screens candidates for integrity after special background checks (e.g., no criminal record, truthful information about education, truthful asset declaration), and any other information it may receive regarding the candidate (Art. 74 LJSJ). Public Integrity Council (PIC) does not have a role, but discussions were ongoing about adding PIC's integrity assessments to the selection of first instance court candidates, similar to qualification assessments and promotions. At the same time, it is questionable whether the current capacity and resources of PIC would allow for expanding its role.

Following the selection, HQCJ recommends one candidate per each vacant position to the HCJ which can reject a candidate in case of a reasonable doubt about his/her compliance with the integrity or professional ethics criteria, and any other circumstances that may negatively affect the public trust in judiciary in case of the appointment. This decision is highly discretionary as it is based on HCJ's assessment of the circumstances related to a candidate and their qualities without clear criteria, grounds, or methodology (Art. 79 LJSJ). This refusal can however be appealed in court. The monitoring team found this excessive discretion problematic and recommended clarifying it in the law. The authorities assured that the integrity assessments of the HQCJ will play an important role in the future selections of judges in the reformed HCJ, and the HCJ will have to justify its decisions made through a transparent process with 14 votes, requiring votes of at least 3 non-judicial members, which will address the concerns of the monitoring team.

Ukraine complies with element A, but not B of this benchmark, as integrity assessments are not based on clear criteria and methodology.

In the absence of a functioning Judicial Council in the reporting period, proposals for only two judicial appointments were made, based on the process completed by the "old" HQCJ and HCJ. Given many vacancies, there is an urgent need for the selection and appointment of judges in Ukraine. In the past, Venice Commission urged Ukraine to appoint judges who had passed qualification assessments prior to the reform, as soon as possible. The authorities informed during the on-site visit that this would not be a helpful solution as there are not many such cases. As a priority, Ukraine is planning to speed up the process of qualification assessment of sitting judges. On the other hand, to accelerate the process, a draft law aimed at streamlining the selection, without compromising its quality and integrity assessments, provides for shortening the process from 24 to 9 months.

Benchmark 6.1.5.

Judges are promoted:

Element	Compliance
A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply	✓
B. According to merits (experience, skills, integrity)	X

In Ukraine, promotion of judges is equivalent to the appointment to a higher-level court: appeals court, higher specialized court, or Supreme Court. Promotions are within the mandate of HCJ, HQCJ and PIC. HQCJ is responsible for the selection supported by PIC's integrity assessments, and HCJ is responsible for the decision to propose candidates to the President for the appointment.

Promotions are based on competitive procedures and merits overall (LJSJ, art. 79, 81) except for the assessment of integrity that is not based on clear criteria and methodology.

HQCJ publishes announcement online and any eligible candidate can apply. A qualification assessment is a part of the promotion process (described in detail under benchmark 1.1). Based on the results of qualification assessment, candidates are rated and selected for vacant positions. Specific experience (for attorneys and law scientists) and effectiveness of carrying out judicial function are considered in the assessment of professional competences. Qualification assessment includes general skills and psychological tests for moral and personal qualities. It also includes assessment of compliance with integrity and professional ethics criteria.

While PIC's assessment of ethics and integrity are based on clear criteria, its decision is not mandatory and can be overruled by HQCJ (negative conclusion to the positive one and vice-versa). Furthermore, at

a later stage, when deciding on the candidates for the appointment, HCJ can make its own determination on integrity, rejecting candidates recommended by HQCJ. Criteria for this decision are not defined, and its ground is vaguely formulated: "existence of reasonable doubt on compliance of candidate with criteria of integrity or professional ethics, or other circumstances that may negatively impact on public trust to judiciary in case of such an appointment". Therefore, despite integrity assessment being part of the promotion process, the monitoring team could not conclude the compliance with the requirements of this benchmark relating to integrity (see also above, benchmark 6.1.1 and 6.1.4.)

Ukraine complies with element A, but not B of this benchmark, as integrity assessments are not based on clear criteria and methodology.

Indicator 6.2. Appointment of court presidents and judicial remuneration and budget do not affect judicial independence

Background

The pilot report concluded that the selection of court presidents was not merit-based or transparent in Ukraine. Court presidents stayed in the office longer than two terms using their influence and various schemes.[63] Judicial remuneration was set in the law and considered as proportionate and sufficient to ensure judicial independence, but the budget of judiciary was found insufficient to ensure its autonomy.[64] The recent reform did not affect the election of court presidents or their term of office.

Assessment of compliance

In Ukraine, judges of respective courts elect court presidents, but the process is not competitive or merit-based. Undue influence of court presidents over judges, and some important decisions, as well as manipulations to hold these positions for more than two terms, have persisted in the assessment period, but the new judicial authorities demonstrated the intolerance to these malpractices and explained the plans of addressing them. The budget of judiciary appears insufficient, but the remuneration of judges is set in the law and excludes discretionary payments.

Benchmark 6.2.1.

Court presidents are elected or appointed:

Element	Compliance
A. By the judges of the respective court or by the Judicial Council or another judicial governance body	✓
B. Based on an assessment of candidates' merits (experience, skills, integrity)	X
C. In a competitive procedure	X

In Ukraine court presidents are elected by meetings (congress) of judges of respective courts (Art. 20 LJSJ) but the law does not envisage competitive merit-based process. There is no requirement to publish vacancies. Candidates are proposed by judges of the relevant court orally at the congress, or in writing in

63 Ibid (p. 71).

64 Ibid (p. 73).

preparation of the congress. Judges can also nominate themselves. Eligibility criteria are set in the law, but candidates' experience, skills, and integrity are not assessed. At the congress, candidates present themselves, judges ask them questions, and discuss the candidates followed by a secret vote and a decision with a simple majority.

The monitoring team was informed that some courts use a better process, at their own initiative. However, no evidence was provided that the election of court presidents in 2022 in practice was based on the assessment of merits or through a competitive procedure.

Therefore, Ukraine only meets the element A of this benchmark.

In addition, stakeholders alluded that the issues described in the pilot report related to court presidents' undue influence on judges and manipulations with the term of office, have not been resolved. Non-governmental stakeholders responding to the questionnaire stated that "court presidents have very important informal role as leaders among judges and use it to influence judicial decisions in particular cases or election of members to judicial governance institutions". According to the stakeholders, court presidents are still often considered corrupt links that affects judicial independence. Several court presidents that have been known for their undue influence and had stayed in office for more than 10 years are still in place.[65] The monitoring team was informed of a legislative initiative in the Parliament to abolish the position of court presidents as such (except the position of President of Supreme Court)[66] however, the authorities did not confirm this information. The authorities also responded to the civil society concerns about the role of the court presidents in the appointment of the HCJ members by the Congress of Judges as these appointments were made from the pool of candidates that passed a robust integrity vetting by Ethics Council (see indicator 3 below), and court presidents did not take part in the meeting that selected relevant HCJ members.

At the same time, the monitoring team observed a positive shift towards intolerance to these malpractices (manipulations of the term of office), which the authorities considered against the spirit of law and integrity of judges, demonstrating a clear resolve to change these through available means, such as disciplinary proceedings, integrity vetting and amendments of the law, as necessary. While they did not confirm any new cases of influence, pressure, or retaliation in the reporting period, unlike past confirmed practices, they highlighted the problem of manipulating the term of the office, and a vision to address them, *inter alia*, through the measures prescribed by the Anti-Corruption Action Plan. One of such measures is legal amendments to explicitly prohibit holding the position of a court president for more than two years (not just consecutive two years), in addition to objective disciplinary proceedings in case of violations, and not appointing judges with questionable integrity in the judicial governance bodies. Ukrainian judicial authorities believe that with this approach the problem will diminish gradually, and integrity culture will grow in the judiciary. Stakeholders have also observed positive signals, but the tangible results are still to be seen, mainly through the work of HCJ, who is maintaining the registry of undue influence reported by judges. In addition, according to the Stakeholders, the proposed vetting of Supreme Court Judges will be important in this regard.

65 District Administrative Court of the city of Kyiv known for various malpractices has been liquidated. The Law on its liquidation and the formation of the Kyiv City District Administrative Court, adopted on 13 December 2022.

66 https://itd.rada.gov.ua/billInfo/Bills/Card/41135

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

Element	Compliance
A. Was not less than 90% of the amount requested by the judiciary or, if less than 90%, is considered sufficient by the judiciary	X
B. Included the possibility for the judicial representatives to participate in the consideration of the judicial budget in the parliament or the parliament's committee responsible for the budget	X

State Judicial Administration as a main administrator of funds for most of the courts requested the financing of UAH 26,69 billion, while the Law on State Budget for 2022 provided UAH 19,03 billion, with the reduction to UAH 16,92 billion in April 2022. This means that only 63% of the funds (after the reductions in spring 2022) requested by judiciary was provided from the State Budget in 2022.

According to the civil society respondents to the monitoring questionnaire, the judicial system did not have a sufficient budget for proper functioning in the reporting period. Underpaid court staff and related personnel shortage was listed as one of the problems. In addition, according to the latest available data, the debt of the State Judicial Administration amounted to more than UAH 1 billion, and after the issuance of court decisions, taking into account court fees, executive fees and legal aid costs, this amount will almost double. All this indicates the underfunding of the judiciary in 2022.

Representatives of judiciary did not have an opportunity to directly participate in the consideration of the judicial budget in the budget committee of the Verkhovna Rada but had an opportunity to indicate their needs. This is not in line with the benchmark.

In September 2022, the chief managers of the funds of the judicial authorities provided indicators of the deficit of expenditures necessary for the functioning of the judicial system in conditions of Martial Law, on the basis of which proposals were developed for the draft law on the State Budget 2023. The working group on the issues of proper financing of the judiciary in Ukraine worked with the State Judicial Administration (SJA) to calculate the fair distribution of expenses between courts in the SJA system.

Ukraine is not compliant with the elements of the benchmark 2.2.

Benchmark 6.2.3.

The level of judicial remuneration:

Element	Compliance
A. Is fixed in the law	✓
B. Excludes any discretionary payments	✓

Judicial remuneration is fixed in the law and excludes discretionary payments (Art. 135, LJSJ). Remuneration of a judge consists of a base salary and additional payments for seniority, for holding an administrative position in court, an academic degree, and work involving state secrets. Minimal salary of a judge of a first instance court is UAH 63,060 (EUR 1 865), and of a Supreme Court judge is UAH 157,650 (EUR 4,664). As of January 2022, the average salary in Ukraine was UAH 14,577 (EUR 471) and in Kyiv, the highest in Ukraine, was UAH 21,347 (EUR 690). According to the Government and stakeholders,

considering the average salary in Ukraine and judicial remuneration was sufficient to ensure judicial independence. At the same time, the authorities voiced the concerns that the remuneration is not regularly adjusted. **Ukraine is compliant with both elements of the benchmark.**

Indicator 6.3. Status, composition, mandate, and operation of the Judicial Council guarantee judicial independence and integrity

Background

High Council of Justice (HCJ) is a judicial governance body with a mandate of appointment, disciplinary proceedings, and dismissals of judges and its own budget. High Qualification Commission of Judges (HQCJ) is another judicial governance body dealing with the selection and qualification assessment of judges. Even though the HQCJ does not manage its budget independently, the funding is provided through another judicial body (the State Judicial Administration). Both bodies qualify as judicial governance bodies for the purposes of this performance area.

Judicial governance bodies had been widely perceived as a main bottleneck to the judicial independence in Ukraine. Due to serious misgivings in their functioning, for example, in the process of appointment of Supreme Court Judges or disciplinary proceedings, they were dissolved in 2019. Venice Commission noted that "the issue of integrity and ethics of the HCJ should be addressed as a matter of urgency".[67]

The 2021 reform package aimed at transparent and merit-based formation of these bodies. To select new and vet the existing members of HCJ, an Ethics Council was created composed of three Ukrainian and three international experts with a prevailing vote. Likewise, to form a new HQCJ, a Selection Commission was established also with three Ukrainian and three international experts. After the first interviews held by Ethics Council, most members of the HCJ have resigned. [68] Interrupted by the war, in May 2022, the Ethics Council resumed its work, however, the new HCJ was fully formed only by January 2023.[69] HCJ appointed new members of HQCJ in June 2023 following the selection by the Selection Commission. [70]

Assessment of compliance

Judicial governance bodies are now in place but have not been functioning in most of the reporting period Following the reform, they have been formed through a competitive selection and appointment process, but their membership in the law or in practice does not meet the requirements of the relevant benchmarks. There is a coordinated process of completing framework necessary for functioning of these bodies. The newly formed bodies have been operating largely transparently, their decisions are published but HCJ decisions lacked justification.

67 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)018-e (para. 16).

68 https://kyivindependent.com/most-members-of-main-judicial-body-to-resign-over-reform/

69 HCJ was functioning briefly in January-February of 2022.

70 https://vkksu.gov.ua/news/pryznacheno-novyy-sklad-vyshchoyi-kvalifikaciynoyi-komisiyi-suddiv-ukrayiny

Benchmark 6.3.1.

	Compliance
The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers	✓

High Council of Justice is set up based on the Constitution of Ukraine, which defines its powers (art. 131), along with the law on HCJ, (art. 3). The Ethics Council carries out integrity vetting of candidates for the membership to HCJ based on the pre-established criteria on integrity and ethics and proposes at least two candidates for each vacant position to the appointing authorities (art. 9-1, Law on HCJ). This rule does not apply to the President of Supreme Court, who is an ex officio member of HCJ.

The new composition of the HCJ was formed following a competitive selection process carried out by Ethics Council. However, concerns regarding the transparency have been raised since the Ethics Council decided to suspend broadcasting interviews temporarily. The Ethics Council explained this decision with the objective to protect candidates who are sometimes in the army fighting to defend Ukraine in Russia's war of aggression. Conversely, the interviews for the selection of heads of anti-corruption law enforcement bodies carried out in the same circumstances had been broadcasted (see PA 8).

Stakeholders met during the on-site visit provided an overall positive assessment, largely validating the selection process and its results. At the same time, specifically civil society representatives voiced criticism highlighting the lack of feedback, communication, and transparency of deliberations of the Ethics Council following the submission of information about the candidates by civil society and initial meetings to clarify provided information. Other stakeholders explained that the Ethics Council had interacted with civil society, in Ukraine but also in Warsaw where its meetings were held due to the war. [71] Some representatives contended that the Ethics Council's positive decisions lacked reasoning and questioned the integrity of several of the newly appointed members of HCJ. Civil society also challenged the composition of the Ethics Council and recommended that in future preference be given to the models that include Ukrainian stakeholders in the composition, along with international experts (for example like PCIE). During the on-site visit, the Ethics Council representative explained that the Council received voluminous information from the public and civil society about the candidates. The members reviewed these in detail and published well- substantiated decisions following extensive deliberations, including in person meetings in Poland, due to the war.

High Qualification Commission of Judges (HQCJ) is a body in charge of the selection of judges. It is set up based on the Constitution of Ukraine (Art. 131) and the primary law defines its mandate and powers (art. 92-93 LJSJ). HQCJ is operational since June 2023. The Selection Commission selected candidates for HQCJ membership through a merit-based process and HCJ formed the current composition. According to the stakeholders, the Selection Commission ensured full transparency in the selection of candidates for the HQCJ.

As both HCJ and HQCJ were set up based on law and functional in the reporting period, **Ukraine is compliant with the benchmark.**

[71] Decisions of the Council were made only during the meetings held in Ukraine, not in Warsaw.

Benchmark 6.3.2.

The composition of the Judicial Council and other judicial governance bodies includes not less than half of the judges who:

Element	Compliance
A. Are elected by their peers	X
B. Represent all levels of the judicial system	X

The HCJ consists of 21 members, with 10 judges or retired judges elected at the Congress of Judges (art. 131, Constitution of Ukraine) from among the pool of candidates vetted by Ethics Council. The President of the Supreme Court is an ex officio member and not elected by peers. Currently, the HCJ operates with 17 members of which 11 are judges, including the President of the Supreme Court, but the latter does not count in the requirement of the less than of this benchmark. While the law does not provide a rule on representation of judges of various levels of judicial system in the HCJ, in practice, both old and current HCJ included representatives of all levels of judiciary. **The HCJ does not meet the elements of the benchmark, as its composition includes less than a half of judges elected by their peers, and the representation of all levels of judicial system is not ensured by law.**

The HQCJ consists of 16 members, including 8 members appointed among judges or retired judges selected by a selection commission through a competitive process (art. 95, 95-1 of the LJSJ). There is no legal requirement on representation of judicial HQCJ members all the levels of the judicial system. New HQCJ members were appointed in June 2023 only, judicial members include representatives from appeal and first instance courts. **The HQCJ does not meet the elements of the benchmark, as its judge members are not elected by their peers and the representation of all levels of judicial system is not ensured by law.**

Benchmark 6.3.3.

	Compliance
The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives)	X

HCJ includes 10 members appointed or elected by the following authorities two each: President, Parliament, Congress of Attorneys, All-Ukrainian Conference of Prosecutors, and Congress of Law Academia (art. 131, Constitution of Ukraine). There are no regulations on who could be appointed or elected by these authorities and at least in case of the President and the Parliament, it depends on their discretion. The election and appointment should be done from the pool vetted by Ethics Council.

According to the Guide at least 1/3 of judicial governance body members, which is seven members in case of HCJ, should represent civil society or other non-governmental stakeholders and non-judicial members who are public officials (for example, members of parliament, government, prosecutors) do not count for the compliance with this benchmark. The relevant requirements are not spelled out in legislation, but four members that are attorneys and academia qualify as non-judicial members under this benchmark by nature. As for the members nominated by Parliament or the President, in practice in 2022 the Parliament

appointed two members from attorneys/civil society and academia respectively,[72] on the contrary, the President under its quota appointed a judge in 2019 who still is a member of HCJ.[73] In the current composition only three non-judicial members meet the requirements of the benchmark. **Therefore, HCJ does not meet the benchmark neither in law nor in practice.**

In case of HQCJ, the law provides that of 16 members only 8 should be judges or retired judges. There are no regulations about non-judicial members. In practice, among new HQCJ members appointed in 2023, 5 members represent academia (3) and attorneys (2). [74] 3 other non-judicial members were public officials before the selection as HQCJ members, i.e., they do not represent civil society or non-governmental stakeholders.[75] **Therefore, HQCJ does not meet the benchmark in law or in practice.**

Non-judicial members of both HCJ and HQCJ have voting rights.

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

Element	Compliance
A. Are published online	✓
B. Include an explanation of the reasons for taking a specific decision	X

The law provides for publication of the full text of decisions of the HCJ in seven days after their adoption (art. 34, Law on HCJ). In practice, decisions of HCJ were published online on the HCJ official website in the reporting period when HCJ was functional. **Thus, the element A is met.** In August 2023, HCJ amended its Rules of Procedures and defined that its meetings must be broadcasted online (in case of objection of one of the parties, HCJ may decide not to broadcast a meeting).[76]

As regards justification, an example provided by the authorities includes an explanation of the reasons.[77] However, non-governmental stakeholders reported about a recent case (2023) of an unreasoned decision of HCJ on rejection to temporary suspend powers of a judge who is a suspect in NABU case.[78] Another example is a decision on refusal to appoint a judge after the qualification assessment.[79] The authorities stated that two cases out of over 900 do not represent the overall situation. At the same time, civil society stressed that the above-mentioned case is high-profile, and it is not sufficiently reasoned. **The element B is not met.**

72 https://hcj.gov.ua/news/obrano-dvoh-chleniv-vyshchoyi-rady-pravosuddya-vid-verhovnoyi-rady-ukrayiny

73 https://hcj.gov.ua/rubric/sklad-vyshchoyi-rady-pravosuddya-0

74 One attorney is a retired judge.

75 https://www.ukrinform.ua/rubric-society/3716958-visa-rada-pravosudda-priznacila-16-novih-cleniv-vkks.html

76 https://hcj.gov.ua/sites/default/files/field/reglament_vrp_17.08.2023.pdf

77 https://hcj.gov.ua/doc/doc/25067

78 https://hcj.gov.ua/doc/doc/39544.

79 https://hcj.gov.ua/doc/doc/39672

Indicator 6.4. Judges are held accountable through impartial decision-making procedures

Background

The pilot report found disciplinary proceedings to lack impartiality and highlighted instances of using it as a weapon against judges with high integrity. [80] 2021 amendments substantially changed the disciplinary procedure introducing Disciplinary Inspectors Service, an independent unit in the Secretariat of the High Council of Justice (HCJ) responsible for initiating and preparing a case for a discussion and decision by Disciplinary Chambers of HCJ. However, the Service is not in place yet and disciplinary proceedings of judges are on hold with a backlog of about 9000 cases at the time of the on-site visit. HCJ has to select Disciplinary Inspectors through a transparent, merit-based process, but it only resumed functioning in January 2023.

Assessment of compliance

In Ukraine, grounds for disciplinary proceedings lack clarity, and decisions have not been substantiated in the past. At the time of the monitoring, the disciplinary proceedings were put on hold, awaiting further legal amendments. Disciplinary investigation of allegations against judges is separated from the decision-making in the law and the procedural guarantees for judges are in place. However, the new framework is not operational yet, and there is a backlog of some 11 000 disciplinary complaints. Ukraine is planning to reintroduce its old model with some changes, in the transition period, until the new model can be operationalized. Ukraine is encouraged to finalise the reform as soon as possible.

Benchmark 6.4.1.

The law stipulates:

Element	Compliance
A. Clear grounds for the disciplinary liability of judges that do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds	x
B. All main steps of the procedure for the disciplinary liability of judges	✓

The pilot report found that the grounds for disciplinary liability were not narrowly and clearly defined.[81] There has been no change in this regard and at least the following ground is problematic: “commission by a judge of conduct that defames the title of judge or undermines the authority of justice, in particular in matters of morality, honesty, integrity, conformity of the judge's lifestyle to his status, compliance with other judicial ethics and standards of conduct that ensure public confidence in the court” (art. 106 of the LJSJ). The relevant GRECO recommendation also remains unimplemented, as noted in the latest compliance report.[82] The anti-corruption strategy and action plan envisage legislative amendments to bring grounds

80 https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1684346976&id=id&accname=guest&checksum=64CC2156C9460E49F15F307B099C21C0 (p. 82).

81 https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1684346976&id=id&accname=guest&checksum=64CC2156C9460E49F15F307B099C21C0 (p. 81)

82 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790 (p. 15-16).

for disciplinary liability for judges in line with GRECO recommendations and align them with the principle of legal certainty.

All main steps of disciplinary proceedings against judges are defined in the Law on HCJ, including filing a disciplinary complaint, examination of the complaint, opening of a disciplinary case, hearings, rights, and obligations of the parties. Under the new model, which is yet to be put in practice, Disciplinary Inspectors consider a complaint and propose to HCJ Disciplinary Chamber to open a case or not (art. 43-46, Law on HCJ). If the case is initiated, Disciplinary Inspector prepares the case for the consideration by the HCJ disciplinary chamber (art. 48, law on HCJ). A judge and a complainant have a right to participate in the hearing in person or through a representative, witnesses and other participants can also take part. Decisions are approved by a simple majority of the members of the Disciplinary Chamber.

Ukraine is not compliant with element A and is compliant with the element B of the benchmark.

Benchmark 6.4.2.

	Compliance
The disciplinary investigation of allegations against judges is separated from the decision-making in such cases	✓

Disciplinary investigation of allegations against judges is separated from the decision-making in law. Newly introduced Disciplinary Inspectors are mandated to carry out a preliminary check of a disciplinary complaint against a judge, collect information and documents, analyse them, draft decisions of HCJ Disciplinary Chambers (art. 28, Law on HCJ).

However, Inspectors unit is not in place yet and disciplinary proceedings against judges have not been carried out in practice in the reporting period. Inspectors were to be selected by newly formed HCJ, which stated operating in January 2023.

Non-governmental organisations contend that the relevant law is still problematic on various grounds, including the following: 1) the status of the Service of Disciplinary Inspector (SDI) and disciplinary inspectors, which does not ensure their independence; 2) non-transparent selection procedure of inspectors; 3) impossibility of Disciplinary Chambers of the HCJ to consider complaints before the formation of the Service of Disciplinary Inspectors. To address these points, amendments need to be elaborated, which would establish 1) the subordination of disciplinary inspectors directly to the HCJ (and not to the head of the HCJ Secretariat), 2) an open competition for the positions of inspectors, which will be carried out by a selection commission formed by the HCJ with the involvement of the Public Integrity Council to check for integrity, 3) until the creation of the SDI, consideration of disciplinary complaints takes place in the HCJ (according to the previous model). [83]

A new law foresees further revisions of the 2021 reform to redesign the Disciplinary Inspectors. At the time of the on-site visit the draft had been prepared in close consultations with international partners and civil society, according to the authorities and adopted on 10 August 2023.

To address the backlog as a temporary measure in the transition period, Ukraine is in the process of reinstating the old (2016) model where a HCJ member initiates a case and a Disciplinary Chamber of the HCJ decides, with some adjustments to the procedure until Disciplinary Inspectors are selected. Stakeholders do not contest this temporary solution, as they believe the risks of abuse are lower with the new reformed HCJ.

[83] Eight thousand disciplinary complaints: how to organise the work of the new HCJ effectively? https://bit.ly/44P8PSX

While the reasoning behind this temporary solution is clear to the monitoring team, having had no opportunity to review the proposed changes to the old procedure, it reiterates that the previous model was not in line with international standards. Therefore, it encourages Ukraine to finalize the legal framework for the new model and put in place Disciplinary Inspectors as soon as possible.

Ukraine is compliant with the benchmark in law and there has been no practice in the reporting period.

Benchmark 6.4.3.

	Compliance
There are procedural guarantees of the due process for a judge in disciplinary proceedings, namely the right to be heard and produce evidence, the right to employ a defence, the right of judicial appeal, and these guarantees are enforceable in practice	✓

In Ukraine, there are due process guarantees for a judge in disciplinary proceedings, which includes the right to be heard and produce evidence, the right to employ a defence, and judicial appeal. A judge can provide explanations, request summoning of witnesses, ask questions to the participants, express objections and recusals, examine case materials and make other requests. A judge has a right to be present and can request to postpone the hearing once, in case he/she cannot participate. A judge can appeal the decision in a disciplinary case to HCJ and the HCJ decision can be subsequently challenged in the Supreme Court. The monitoring team did not come across any reasons why these would not be enforceable in practice. **Therefore, Ukraine's law is in line with the benchmark.**

In the reporting period disciplinary proceedings have not been carried out as the new model is not in place yet. As Ukraine is in the process of redesigning the disciplinary proceedings to align them with international standards, the issue of pending cases raises concerns. It would be important that these cases are dealt with properly and are not terminated due to expiry of statute of limitations or dropped arbitrarily.

Benchmark 6.4.4.

	Compliance
There is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice), or such sanctions are not used in practice	✓

In Ukraine, there is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice). With a decision of the Constitutional Court of Ukraine in June 2020, the former art. 375 of the Criminal Code of Ukraine providing liability for knowingly unfair judgement was declared unconstitutional and became invalid in 6 months following the decision.

Assessment of non-governmental stakeholders

Overall, stakeholders positively assess the vector of judicial reforms, recognizing signs of openness and attempts of building the culture of integrity and accountability among judicial authorities. However, as most of the reforms of the law are still to be finalized Ukrainian judiciary is once again in transition and the practice based on the reform are yet to be seen.

Regarding the **selection and promotion** of judges, stakeholders recalled one of the problems in the procedures that led to a reform of judicial governance bodies: "the HQCJ seriously delayed with announcing competitions to fill existing judicial vacancies, and the HCJ then sabotaged the appointment of decent candidates". Stakeholders also raised a concern that numerous judicial positions are vacant, so the procedures for selection of judges have to be optimized, in particular, training in the National School of Judges can take less time (different replies on duration, 9 or 12 months) and it can take place at the final stage of the selection process. One more proposal from non-governmental stakeholders was to "improving the legal certainty" of PIC's role in selection and promotion of judges. As the judicial governance bodies are now working on redesigning the model of selection, qualification assessment and promotion of judges, there is a call to establish transparent, clear, and merit-based processes.

On the issues of undue influence by **court presidents** who stay in the office for a long time using various schemes to manipulate the system, stakeholders were unanimous that these practices have not been uprooted yet, but there are certain improvements. With the abolition of Kyiv City District Administrative Court and stronger enforcement, only a few examples have been reported. HCJ's role in addressing reporting of undue influence by judges will be instrumental. Stakeholders also believe that a system of rotation of court presidents should be in place and judges should be free and encouraged to report undue pressure.

Non-governmental stakeholders agree that the level of **budgetary** allocation to judiciary is rather insufficient (one respondent believes it is sufficient). NGOs provided contradictory information about the participation of representatives of judiciary in the parliamentary consideration of the state budget for 2023. One reply stipulates that judges themselves bear responsibility for insufficient funding of the judiciary, because after the restrictions on the level of renumeration imposed uniformly for public officials due to COVID-19 and declaration of that restriction unconstitutional, judges requested compensation of renumeration they had not received. Judicial remuneration seems sufficient, but not of the court staff and judicial assistants, which was considered low during the pilot.

Regarding **judicial governance bodies,** it was stressed that the practice of the legal reform is yet to be assessed, because new composition of HCJ "may repeat the mistakes of the previous one as the reform was not bold enough to touch the authority of the congress of judges". Stakeholders also mentioned that while attorneys are included to the HCJ **composition**, "there are huge issues of independence and integrity in Ukrainian bar. The most dubious members of the former composition of the HCJ were appointed by the congress of attorneys"[84]. The same point was made about representatives of law academia, whose representative was defined as non-compliant with integrity requirements by the Ethics Council during one-off integrity assessment of sitting HCJ members.[85] On the other hand, representatives of the international community validated the selection processes, stating that quality of assessments have not been compromised in case of neither HCJ nor HQCJ selections. At the same time some signals of lack of transparency have been noted, highlighting a recent example when HCJ used secret voting when deciding on the performance of the leadership of State Judicial Administration, so it was not possible to see how the individual members voted. CSO representatives also call for a greater **transparency** of HCJ work and its disciplinary chambers, namely, to introduce video-broadcasting of meetings (cancelled in 2019), introduce rollcall (nominal) voting and publication of its results.

NGOs provided information that HCJ decisions were **published**, but for a certain period were exempted from public access after the start of full-scale war of aggression started by Russia. Later, the access was reinstated. In general, HCJ decisions in 2022 were assessed as reasoned, however, one of respondents

84 http://en.dejure.foundation/tpost/ymkjz78fd1-the-acting-hcj-head-malovatsky-and-the-h

85 https://ec.court.gov.ua/userfiles/media/new_folder_for_uploads/ec/rishennj_6_07_05_2022.pdf

pointed to a decision of new composition of HCJ on refusal to the motion of Head of SAPO to suspend powers of a judge.[86]

As to **disciplinary liability** of judges, respondents recalled that previously HCJ failed to carry out disciplinary proceedings in an impartial manner. Since August 2021, HCJ has not been able to carry out disciplinary proceedings, as explained above. This function was restored with the law adopted on 10 August. A number of stakeholders mentioned that legislative amendments related to disciplinary inspectors are highly desirable: (1) to subordinate this unit directly to HCJ and not the head of HCJ secretariat; (2) an open competition for the positions of inspectors, which will be carried out by a selection commission formed by the HCJ with the involvement of the Public Integrity Council". Respondents also share the view that temporary assignment of disciplinary investigation to HCJ members-rapporteurs is possible (the model before 2021) until the unit of disciplinary inspectors is formed. One of respondents also pointed to the need to establish "the order of consideration of disciplinary complaints".

All non-governmental stakeholders agree that there are sufficient **procedural guarantees** for judges in **disciplinary** proceedings, most of the respondents think that grounds for disciplinary proceedings are also **clear**, and one respondent believed they are not.

Civil society representatives further informed the monitoring team that about the recent legislative proposals that may endanger the independent selection and appointment of judges and introduce a dubious polygraph testing of acting judges.

86 https://hcj.gov.ua/doc/doc/39544

8 Specialised Anti-Corruption Institutions

In Ukraine, specialisation of investigation and prosecution of high-level corruption is ensured through anti-corruption investigative and prosecutorial bodies NABU and SAPO. The previously widespread undue interference in the functioning of these bodies has substantially diminished in the assessment period. While the new status of NABU does not seem to impede its functioning, SAPO should benefit from an increased institutional independence from the Prosecutor General's Office. ARMA, the specialised stand-alone body for identification, tracing, management and return of illicit assets, demonstrated some results in practice, except in the asset recovery field. ARMA should ensure transparency, accountability, and due process to increase its credibility and build public trust in its work. The appointment of the heads of NABU and SAPO was transparent and merit-based, and their tenure was protected in the assessment period. The Head of SAPO was appointed at last after a long, obstructed process. Meanwhile the operations of NABU and SAPO suffered, as key decisions in high-level corruption cases had been left at the discretion of the Prosecutor General. Given the past repeated attempts to dismiss the NABU Director, closing legislative gaps in the dismissal grounds and procedures is important along with other measures to prevent such attempts in future. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently. NABU has a direct access to tax and customs databases, but it cannot perform independent wiretapping and the access to bank data

remains challenging in practice. Statistics on the work of specialised law enforcement bodies are collected and published but would benefit from further disaggregation. The specialised anti-corruption bodies demonstrated an important progress of enforcement of high-level corruption cases in recent years with the number of convictions growing despite the war.

Figure 8.1. Performance level for Specialized Anti-Corruption Institutions is outstanding

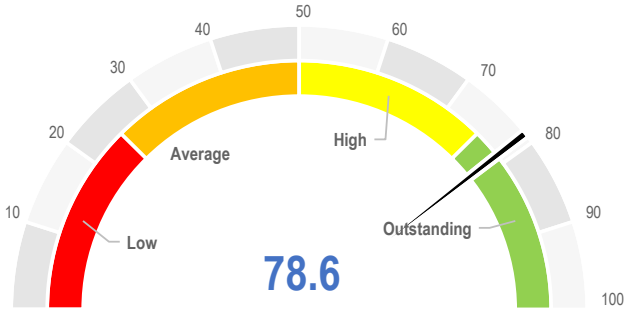


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators

Indicator 8.1. The anti-corruption specialisation of investigators and prosecutors is ensured

Background

The National Anti-Corruption Bureau of Ukraine (NABU) is an investigative body specialised in high-level corruption cases. NABU's investigative jurisdiction is mirrored by the prosecutorial jurisdiction of the Specialised Anti-Corruption Prosecutor's Office (SAPO) and the judicial jurisdiction of the High Anti-Corruption Court (HACC).

The pilot of the 5th round of IAP monitoring report raised concerns of alleged political and other undue interference in the work of NABU and SAPO, undermining the enforcement of high-level corruption cases. It called on Ukraine to preserve the independence and autonomy of its specialised law enforcement institutions and protect their jurisdiction.[87]

In 2021, the amendments based on a Constitutional Court decision revoked some of the provisions of the Law on NABU and NABU became a central executive body with a special status, but its operational and investigative independence seems to have remained intact. At the same time, potential risks of impediments in NABU's functioning are now higher compared to its previous independent status. NABU representatives, however, confirmed that in practice the obstacles for NABU's operations related to its status (such as the lack of the power to independently conduct the procurement) have been promptly resolved by the Cabinet of Ministers.

Assessment of compliance

Specialisation of investigation and prosecution of high-level corruption is ensured in law and in practice. Investigative and prosecutorial jurisdiction are clearly delineated and primarily assigned to NABU and SAPO, respectively. These specialised anti-corruption bodies demonstrated an important progress of enforcement of high-level corruption cases in recent years with the number of convictions growing despite the war. The interferences into the jurisdiction and functioning of these bodies has substantially diminished compared to the situation during the pilot report and are limited to some isolated cases without any clear attribution to a deliberate or concerted political or other undue influence. While the new status of NABU did not seem to impede its functioning in the reporting period, in the view of the monitoring team, SAPO should benefit from an increased institutional independence from the Prosecutor General's Office of Ukraine.

87 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

Benchmark 8.1.1.

Investigation of corruption offences is assigned in the legislation to a body, unit or a group of investigators which specialise in combatting corruption:

Element	Compliance
A. There are investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (70%) OR	B (100%)
B. There is a body or unit of investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (100%)	

Investigation of corruption offences is assigned to several pre-trial investigation agencies, including the National Anti-Corruption Bureau of Ukraine (NABU), the State Bureau of Investigation (SBI), the Economic Security Bureau, the Security Service of Ukraine (SSU), and the National Police (art. 216 CPC).[88] For the purposes of this benchmark, in case of multiple bodies investigating corruption cases, the one dealing with high-level corruption[89] should be assessed, which is NABU.

NABU is a pre-trial investigative body dealing exclusively with the investigation of high-level corruption and corruption-related offences (such as money laundering or false statements in asset declarations) in the public sector. In particular, NABU's investigative jurisdiction covers corruption and related offences:

- committed by high-ranking officials (listed in the Art. 216.5.1 CPC);
- if the object of crime (benefit) or damages exceed certain value (500 times higher than the subsistence minimum for able-bodied persons);
- committed against a foreign official.

In exceptional circumstances, for instance, in case of multiple offences, encompassing corruption, where the separation of criminal proceedings is impossible, NABU may investigate other criminal offences (Art. 216, CPC). NABU may also investigate criminal offences that caused or could cause serious consequences to state or public interests, as well as freedoms and interests of an individual or a legal entity.

The SBI investigates offences committed by NABU Director, Head of SAPO and its prosecutors, and judges of the High Anti-Corruption Court, and the National Police investigates corruption offences that fall outside the jurisdiction of NABU and SBI. The Security Service of Ukraine (SSU) has a jurisdiction over the abuse of power or official position offence (Art. 364, CC), except for cases being investigated by NABU. In addition, the Economic Security Bureau has the mandate to investigate cases of embezzlement and abuse of power or official position under certain thresholds of the amount of the object of crime or its damage, if these cases are not under NABU's and SBI's jurisdiction.

The law gives precedence to NABU in case of concurring jurisdiction (for example with SBI, Art. 36.5 CPC). Jurisdictional disputes are settled by the Prosecutor General or deputy Prosecutor General (Art. 216.5, CPC).

88 Criminal Procedure Code Of Ukraine, Article 216, https://zakon.rada.gov.ua/laws/show/4651-17#Text

89 "High-level corruption": Corruption offences which meet one of the following criteria: A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories). B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to). A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly minimum wage (or the equivalent of the minimum wage if it is not applicable) fixed in the respective country on 1 January of the year for which data is provided.

Since NABU is a stand-alone body with a clearly defined mandate to investigate high-level corruption cases, Ukraine is aligned with a higher standard under this benchmark (element B).

Benchmark 8.1.2.

Jurisdiction of the anti-corruption body, unit, or a group of investigators specified in 1.1, is protected by legislation and observed in practice:

Element	Compliance
A. The legislation does not permit corruption cases to be removed from the specialised anti-corruption body, unit, investigator, or allows it only exceptionally, based on clear grounds established in the legislation	✓
B. There were no cases of transfer of proceedings outside legally established grounds	✓

There is a general prohibition to assign pre-trial investigation of criminal proceedings under NABU's jurisdiction to other pre-trial investigative bodies (Art. 36.5, CPC). While previously this prohibition was absolute, in March 2022, the Parliament adopted an exception in response to Russia's war against Ukraine. These amendments stipulate that proceedings falling within the jurisdiction of NABU can be transferred to another pre-trial investigation body in case of "objective circumstances that make it impossible for NABU to function or to conduct pre-trial investigation under the Martial Law". The authorities explained that these provisions were appropriate at the beginning of the war, and they have not been applied in practice. **Given that removal of cases from NABU is prescribed by law as an exceptional measure based on the clear grounds, Ukraine is compliant with the element A of the benchmark.**

However, despite clear legal provisions, jurisdiction of NABU has not always been observed in practice. The pilot report identified unlawful removal of cases from NABU as a systemic problem.[90] In the reporting period, however, neither the government nor stakeholders have provided examples of an unjustified transfer of proceedings from NABU to other pre-trial investigation bodies. According to NABU, in the reporting period, 215 criminal proceedings were sent for investigation to other investigative bodies, but there were no cases of removal of criminal proceedings from NABU outside the established grounds. This positive shift can be partly explained by the appointment of the Head of SAPO in the reporting period. As the decision on transfer of a case is made by the Head of SAPO or the Prosecutor General and the responsibilities of the acting head of SAPO have not been clear in this regard, these decisions were left at the discretion of the Prosecutor General before the appointment of the Head of SAPO.

Given that there were no instances of removal of cases outside the legally established grounds, the element B of the benchmark is met.

At the same time, the monitoring team was informed of other ways of impeding NABU's investigative jurisdiction, for example, opening cases with a different legal qualification that does not fall within NABU's jurisdiction, sometimes duplicating investigations on the same facts as those investigated by NABU ("cloned investigations").[91] Such "schemes" are allegedly used to create obstacles to investigations, by hiding or weakening evidence, or leading to expiry of pre-trial investigation terms circumventing NABU's investigative jurisdiction prescribed by law. Due to the highly obscure system of the case record, it is difficult

90 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

91 Cloned investigations are when the same facts investigated by NABU are investigated under a different legal qualification by another law enforcement body.

to detect such cases and they are often discovered through unofficial means. If uncovered, these cases are usually transferred later to NABU, but the Bureau has to claim the case through the Prosecutor General or the Head of SAPO, requesting the resolution of a jurisdictional dispute.

The authorities met during the on-site visit revealed that in one such case, an investigative body notified a person of a suspicion and later transferred the case to NABU. The case was terminated due to the expiry of the pre-trial investigation term, as NABU could not gather sufficient evidence to complete the investigation within the short time left. In another case, NABU's operative measures were compromised due to a public disclosure, necessitating urgent searches and other investigative actions to preserve the evidence and the investigation. During the searches, NABU discovered that the necessary evidence had already been seized by the National Police and sent for expertise. The expertise institution refused to transfer materials to NABU as the National Police acted as an investigative body in this case. Later, the Prosecutor General transferred this case to NABU.

Against this background, the monitoring team urges Ukraine to undertake any measures that are necessary to prevent impeding the investigation and prosecution of corruption cases, be it through manipulations with qualification of cases, other breaches of investigative jurisdiction. Enhancing transparent management of case record and improving collaboration and information sharing between law enforcement bodies could be one such measure.

Benchmark 8.1.3.

Prosecution of corruption offences is conducted by a body, unit or a group of prosecutors which specialise in combatting corruption:

Element	Compliance
A. There is a body, unit, or a group of prosecutors with a clearly established mandate to supervise or lead the investigation of corruption cases as the main focus of activity	✓
B. There is a body, unit, or a group of prosecutors with a clearly established mandate to present corruption cases in court as the main focus of activity	✓

There is a specialization of prosecutors introduced for high-level corruption cases. The Specialized Anti-Corruption Prosecutor's Office (SAPO) functions as a structural unit of the Prosecutor General's Office. The mandate of SAPO is clearly defined to include supervision of operative investigative activities and pre-trial investigations conducted by NABU and prosecution of these cases (Art. 8, Law on Prosecution Service (LPS)). SAPO prosecutors present high-level corruption and related asset recovery cases in court and do not deal with other cases. Accordingly, in Ukraine prosecution of corruption offences is conducted by a body which specializes in combatting corruption, and **Ukraine complies with both elements of the benchmark.**

Nevertheless, the lack of institutional autonomy from the Prosecutor General's Office negatively impacts SAPO's operations. For instance, SAPO lacks not only prosecutors, but also IT, financial, internal control, and HR units, which are part of and managed by the Prosecutor General's Office. SAPO's correspondence passes through the PGO hindering operational efficiency and creating confidentiality risks. In addition, under the previous leadership, the PGO has at times hindered initiation of extradition requests, leading to limitations in carrying out SAPO's mandate effectively.

To address these issues and strengthen the institutional independence of SAPO, a draft law was introduced designating SAPO as an independent legal entity. Even though, the Verkhovna Rada's committee rejected this proposal, the discussions continue. There are supporters of this initiative among state bodies, but the Prosecutor General's Office is not in favour of a separation, contending that the unity

of the prosecutorial system, of which SAPO is an integral part, must be preserved. The Ministry of Justice introduced a new draft law in September 2023, proposing a set of measures to bolster SAPO's autonomy. The monitoring team stresses that enhancing the institutional autonomy of SAPO is crucial for reinforcing the prosecution of high-level corruption cases in Ukraine and will closely observe these legislative developments in the upcoming monitoring rounds.

Indicator 8.2. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Background

The pilot report observed a considerable progress in Ukraine's efforts in the recovery and management of corruption proceeds. This progress was primarily attributed to the establishment of a dedicated body, Asset Recovery and Management Agency (ARMA).[92] Nevertheless, despite the positive institutional developments, the actual results were scarce, and there was a need for the reforms, specifically with the aim "to ensure a greater level of insulation from political interference in the management of complex assets".[93] The Head of ARMA had not been selected for almost three years following the resignation of the previous head due to being investigated for involvement in a corruption scheme.[94] At the time of the on-site visit, there are some initial discussions on possible reform of asset management function, separating it from ARMA and moving it to another state body.

Assessment of compliance

In Ukraine, the functions of identification, tracing, management and return of illicit assets are performed by ARMA, as a specialised stand-alone body. Although ARMA's annual report demonstrates results of active work in various operational aspects, asset recovery functions do not seem to have been performed in practice. ARMA's head was finally appointed in the assessment period, but there are major concerns regarding qualification and integrity. ARMA must ensure transparency and due process in its operations to ensure accountability and build public trust in the existing institutional model.

Benchmark 8.2.1.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including from corruption (asset recovery practitioners), functions in practice	X

ARMA serves as a central executive authority with a primary responsibility of identifying, tracing, and recovering the proceeds of corruption (Art. 9, Law on ARMA). ARMA is also tasked with facilitating cooperation with foreign authorities in charge of asset identification, tracing, and management, as well as

92 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE(p. 146).

94 https://nabu.gov.ua/news/koruptc-ia-v-arma-organ-zatoru-zlochinno-grupi-obrano-zapob-zhnii-zakh-d/

other competent foreign authorities and international organisations. Definitions of "asset tracing" and "asset identification" provided in Article 1 of the Law on ARMA link both activities either to criminal proceedings on corruption, or civil proceedings on confiscation of unexplained assets.

However, the task of identifying and tracing assets may also be carried out by NABU, other investigative bodies, and to some extent, the NACP. None of these bodies deal exclusively with the mentioned functions, while ARMA has separate structural units specifically designated for asset identification and tracing.

In 2022, in addition to its primary mandate, ARMA also carried out activities related to the new provisions of the Law on Sanctions. The agency executed requests on search of assets of prohibited political parties in Ukraine as well as assets of persons under sanctions.[95] ARMA also engaged in the purchase of military bonds using its deposit portfolio.

In addition to ARMA's mandate for asset recovery, ARMA plays a role in return of criminal proceeds from abroad. This function is split between other authorities, with the Prosecutor General's Office and NABU acting as central authorities for international cooperation in criminal proceedings during the pre-trial investigation, and the Ministry of Justice (MoJ) assuming functions of central authority in criminal proceedings during the trial. Both ARMA and NABU, along with the MoJ, are responsible for representing Ukraine's interests in foreign jurisdictions. NABU and MOJ are addressing requests for international legal assistance.[96]

ARMA was operational in 2022 and according to its annual report, 4,401 requests on asset identification and tracing were received and fully executed by the agency.[97] As to the return of assets, ARMA's 2022 annual report stated that the agency "did not receive notifications about the initiatives of the Ministry of Justice and approvals of public prosecutors' offices on representation of Ukraine in foreign jurisdictions' bodies in cases related to return of assets to Ukraine". The authorities did not provide any other evidence on the practice of return of proceeds of corruption from foreign jurisdictions to Ukraine. **Therefore, Ukraine does not meet the requirements set of the benchmark due to the lack of asset recovery in practice.** The authorities informed about the recent adoption of the new asset recovery strategy, which is a welcome step, but it is yet to be implemented. The monitoring team underscores the need to make the asset recovery operational in Ukraine.

At the same time, ARMA's credibility has been undermined by allegations of the lack of integrity, investigations of corruption against previous leadership and significant delays or ineffectiveness in the implementation of its tasks. Notably, ARMA has been criticised for the delays in the publication of the register of the seized assets, which became open only in August 2023. In addition, the relevance and accuracy of the data in the registry raise doubts.[98] ARMA must ensure transparency and due process in its operations to build public trust.

In addition, the appointment of the Head of ARMA has been pending for three years, while critical for effective functioning of ARMA. On June 30, 2023, based on the results of the selection procedure, carried out by a specialised selection commission, the Cabinet of Ministers finally appointed a new Head of ARMA. During the on-site visit discussions, some non-governmental stakeholders strongly challenged this appointment as presenting a significant threat to ARMA's work and the overall anti-corruption system. The G7 ambassadors noted civil society concerns and stated that due process is important to build public confidence in ARMA.[99] Non-governmental stakeholders are concerned that the newly appointed Head of

95 https://zakon.rada.gov.ua/laws/show/896-2022-%D0%BF#top; https://zakon.rada.gov.ua/laws/show/z0710-22#top

96 https://zakon.rada.gov.ua/laws/show/228-2014-%D0%BF#Text

97 https://arma.gov.ua/files/general/2023/04/14/20230414151815-81.pdf

98 https://ti-ukraine.org/en/blogs/what-will-you-fail-to-find-in-seized-assets-register/

99 https://twitter.com/G7AmbReformUA/status/1674743336865878017

ARMA lacks necessary experience and allegedly has close ties with the former head of the State Security Service of Ukraine, and business ties with individuals suspected of cooperation with Russia, and that the new Head was also involved in campaigning for a presidential candidate, indicating her political bias.[100]

Benchmark 8.2.2.

	Compliance
A dedicated body, unit or group of specialised officials dealing with the management of seized and confiscated assets in criminal cases, including corruption, functions in practice	✓

Asset management is one of the functions of ARMA (Art. 9, Law on ARMA) covering seized or confiscated assets both in criminal and civil proceedings. ARMA manages movable and immovable property, securities, and other rights by selling the assets or transferring them to external managers. A separate unit deals with asset management within the agency.[101]

The government reported that in 2022, ARMA received more than 340 court decisions on the transfer of seized assets to the agency. Over 156 competitive selections of external managers for seized assets were announced with 19 winners selected. After the valuation of seized assets transferred to ARMA, 10 asset management contracts were concluded, and various types of seized assets transferred to external managers.[102] In January 2023, the Unified State Register of Assets Seized in Criminal Proceedings became operational but was not open to the public during Martial Law until August 2023. **Ukraine is compliant with the benchmark.** At the same time, the pilot report underscored the need for an enhanced transparency and robust procedures to ensure that the selection process of asset managers is not subject to external influences and complexities.[103] The lack of competitive appointment of asset managers and potential abuse during the process of selling of seized assets seem to remain unresolved.[104] The monitoring team was informed that ARMA is working on a draft resolution to align the process of selling seized assets through electronic auctions with international standards and practices, making it more transparent and accessible to organisations worldwide. The proposed changes also include the introduction of a two-tiered electronic trading system (ETS) for asset realisation. Currently, the draft resolution is being refined and will undergo further consideration by the Government.

Due to the dissatisfaction with ARMA's results in asset management, at the time of the on-site visit, policy discussions had been initiated to reform the asset management function, by transferring it to another body, (for example, the State Property Fund of Ukraine). The monitoring team stresses the need for a set of well-thought and coordinated reforms aimed at improving asset management.

100 https://ti-ukraine.org/en/news/appointment-of-olena-duma-can-put-an-end-to-arma/

101 https://arma.gov.ua/organizational-structure

102 https://arma.gov.ua/files/general/2023/04/14/20230414151815-81.pdf (p. 29-54).

103 OECD (2022), Anti-Corruption Reforms in Ukraine: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan. https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1688399125&id=id&accname=guest&checksum=F9BC68BCE6B8C8DDC90038A7A0DEF26F

104 https://www.epravda.com.ua/columns/2023/05/26/700539/

Indicator 8.3. The appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based, with their tenure in office protected by law

Background

The previous rounds of IAP monitoring confirmed that the appointment of the heads of specialized anti-corruption investigative and prosecutorial bodies had been transparent and merit-based in practice.

In 2021, the Constitutional Court found the President's role in the appointment and dismissal of NABU Director unconstitutional. The amended Law on NABU changed the selection procedure with the Government making a final decision from three candidates selected with a decisive role of international experts.[105] In the run up to the end of the tenure of the former NABU Director in April 2022, the selection commission was formed comprising six members, with three international experts selected by international partners and three Ukrainian experts appointed by the government. [106] The new Director was appointed in early March 2023.

Given the significance of the selection of NABU Director, international partners and civil society kept a close eye on the process. The European Union and International Monetary Fund have highlighted its importance as a condition for providing financial assistance to Ukraine.[107] The close oversight of the process resulted in high standards of transparency in the selection process. This opinion is widely shared by stakeholders.

The Head of SAPO resigned in August 2020, and many relevant powers have been de-facto exercised by the Prosecutor General since then. The selection of a new Head was dragged for more than two years, negatively impacting the performance of SAPO. The new Head was finally appointed in July 2022 through a merit-based process, after significant hurdles.[108]

Assessment of compliance

In Ukraine, the appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent, conducted through an open call of candidates who are assessed based on their merits. Their tenure is protected by law. The dismissal grounds for the NABU Director are largely clear, but the regulations of the audit commission for assessing effectiveness of NABU work are not in place, and the procedure for dismissal in line with the Law on Oligarchs is not defined. Given the past repeated attempts to dismiss the former NABU Director, closing legislative gaps will be crucial to prevent such attempts in future. The Head of SAPO was finally appointed after more than two years of dragged process, following important external pressure. The operations of NABU and SAPO suffered during these years, as key decisions on investigation and prosecution of high-level corruption cases had been left at the discretion of the Prosecutor General. SAPO would benefit from a strengthened institutional independence from the Prosecutor General's Office.

105 Initially, the voting rule followed a simple majority principle, but it has since transitioned to either a qualified majority or, in the event of a tie vote, a prevailing decision by international experts.

106 https://zakon.rada.gov.ua/laws/show/148-2022-%D1%80#Text

107 https://www.eurointegration.com.ua/eng/articles/2023/01/16/7154226/

108 https://ti-ukraine.org/en/news/detective-klymenko-wins-sapo-competition-the-commission-has-approved-the-winner-but-there-are-nuances/

Benchmark 8.3.1.

The head of the anti-corruption investigative body, unit, or group of investigators, which specialises in investigating corruption, is selected through the following selection procedure in practice:

Element	Compliance
A. The legislation regulates the main steps in the process	✓
B. The information about the outcomes of the main steps is published online	✓
C. The vacancy is advertised online	✓
D. The requirement to advertise the vacancy online is stipulated in the legislation	✓
E. Any eligible candidates could apply	✓
F. The selection is based on an assessment of candidates' merits (experience, skills, integrity) in legislation and in practice	✓

This benchmark assesses the law and practice of the selection of the head of anti-corruption investigative body, NABU Director.

The Law on NABU sets forth key stages of the selection process, which include: establishment of the selection commission; approval by the selection commission of the rules of procedure, schedule, and criteria and methodology of evaluation; publication of an announcement; screening of applications; knowledge and general aptitude tests; shortlisting candidates for interviews; background checks; integrity and competence interviews and selection of top three candidates proposed for the appointment to Prime Minister of Ukraine. **Given that legislation regulates main steps of the selection process, Ukraine is compliant with the element A of the benchmark.**

The transparency of the process and open competition are guaranteed by law and these requirements have been observed in practice during the selection of the NABU Director in 2022-2023. The announcement of the competition was published on the Government website and widely disseminated through the national print media and other online platforms.[109] It included the list of required documents and eligibility criteria, allowing any eligible candidate to apply. The deadline for the submission of applications initially set at 21 days was extended to 35 days to allow wider access. The selection commission reviewed 78 applications and compiled a shortlist of 74 eligible candidates with the reasoning on exclusions, such as failure to meet established criteria or incomplete documents, or voluntary withdrawal. Based on the results of the knowledge test, 21 candidates were selected for an interview on integrity and 11 candidates were further selected for an interview on competences. Finally, the selection commission identified three shortlisted candidates recommended for an appointment to the Prime Minister. The information published for this appointment included the initial list of candidates with the results of the assessment per each candidate, the shortlists for the interviews, as well as the list of top three candidates proposed to the Prime-Minister for appointment, and the decision of the Cabinet of Ministers appointing NABU Director. **Therefore, Ukraine meets the requirements of the elements B, C, D and E of this benchmark.**

The decision of the selection commission must be substantiated according to the law and include justification for selecting three candidates proposed to the Prime Minister, but in practice it seems to have lacked the reasoning.[110] While not required by the benchmark, in the view of the monitoring team, the publication of a justified decision at each stage of the competition procedure (especially when the decision

109https://www.kmu.gov.ua/storage/app/sites/1/konkurs-nabu/oholoshennya_pro_umovy_ta_stroky_provedennya_konkursu_nabu.pdf

110https://www.kmu.gov.ua/storage/app/sites/1/konkurs-nabu/20-04032023-zasidannia-komisii-z-provedennia-konkursu-na-zainiattia-posady-dyrektora-nabu.pdf

involves voting) would further enhance the transparency and accountability of this process. Furthermore, a procedure in which the selection commission presents a single selected candidate to the Prime Minister would increase the transparency and minimize political discretion at the final stage of the selection process. Another way of achieving this could be a merit-based approach and a transparent decision by the Prime Minister when selecting from the three candidates proposed by the commission.

To conclude compliance with the element F, the monitoring team does not examine the quality of the assessment of candidates, but it determines whether the selection was based on merits in practice: that the assessment of experience, skills, and integrity influenced the decision on the appointment. The selection of the NABU Director included various tests and interviews to assess candidates' experience, skills and integrity. NABU and NACP further explained that integrity assessments are based on specific criteria defined in the Corruption Prevention Law (CPL), such as: existence of criminal liability, including for corruption offences; administrative sanctions for corruption-related offences; reliability of the information specified in the asset declaration; possession of equity rights; health condition and academic degrees; relation to military service; access to state secrets; application to a person of the ban to hold the relevant position, as envisioned by provisions of the Law On Lustration. In addition, the selection commission established its own criteria for assessing integrity and considered information received from non-governmental stakeholders. Each candidate must explain and respond to any concerns regarding his/her integrity in writing (if requested by the selection commission) and during an in-depth integrity interview.[111] **Thus, the monitoring team concluded that Ukraine complies with the element F of this benchmark.**

Benchmark 8.3.2.

The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators, which specialise in investigating corruption, is clear, transparent, and objective:

	Element	Compliance
A.	Grounds for dismissal are defined in the law	✓
B.	Grounds for dismissal are clear and do not include such grounds as "breach of oath", "improper performance of duties", or "loss of confidence or trust" unless the legislation breaks them down into more specific grounds	X
C.	The law regulates the main steps of the procedure	X
D.	The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online	X

The procedure and grounds for dismissal of NABU Director are defined in the Law on NABU. Thus, **Ukraine is compliant with element A.**

A qualified majority (two-thirds) of the Cabinet of Ministers approves the dismissal. In principle, grounds for dismissal are clear (Art. 6 of the Law on NABU). However, the monitoring team raised concerns about the dismissal ground based on the external audit results, if it concludes the ineffectiveness of NABU and improper performance of duties by its Director. "Ineffectiveness" and "improper performance" are not broken down into more specific grounds in the law, as required by the benchmark, but the law implies that the audit commission must define the criteria and methodology for the evaluation (Art. 26 of the Law on NABU). As the audit commission has not been formed yet, these criteria are not in place. **Therefore, Ukraine is not compliant with element B.**

The law regulates the main steps of the procedure, for most of the grounds, which vary depending on a particular ground. For some grounds the dismissal is based on a prior court decision or decision of another

111 https://www.kmu.gov.ua/storage/app/sites/1/konkurs-nabu/kryteriyi-ta-metodika-ocinki-kandydativ-na-posadu-dyrektora-nabu.pdf

competent authority. For external audit, the law defines its frequency and scope, procedure for appointment of the audit commission, the requirement to define criteria and methodology for assessment, rights and obligations of commission members, voting procedure, requirements on publication and dissemination of the audit report.

The main steps of the procedure are not specified for dismissal on the grounds of the violation of the Law on Oligarchs, which is related to a declaration about contacts with an oligarch or its representative. It is unclear who establishes the violation and based on which procedure. As of now, this ground cannot be applied in practice because no one has been identified as an oligarch based on the mentioned law. The law is being amended, and it is planned that the amendments will consider the Venice Commission's opinion, which advised deferring the implementation of this law and suggested a reassessment of its necessity after the war. [112] If the law remains relevant at that time, the Venice Commission emphasized the importance of conducting a significant revision of its provisions.

Non-governmental stakeholders raised concerns regarding the procedure for dismissal due to the inability to perform duties for health reasons. The government authorities explained that in this case evaluation by a medical commission established by a central executive body responsible for implementing healthcare policy (i.e., Ministry of Health) is required. The law does not define the procedure for establishing such a commission or guidelines for its functioning. However, these procedures are clearly defined in the secondary legislation and the government does not see any pitfalls regarding this specific ground for dismissal.

Ukraine is not compliant with element C of the benchmark on account of the lack of clear procedure for dismissal based on the Law on Oligarchs.

There are varying requirements on publication of information about the outcomes of different steps of the dismissal procedure relative to different grounds. For instance, in case of a dismissal based on the negative assessment of effectiveness, online publication of the approved audit report is required (Art. 26, Law on NABU). In instances where dismissal is based on a court decision (e.g., conviction), the publication of the court decision is provided under the Law on Access to the Court Decisions. However, for grounds, such as violation of the Law on Oligarchs or health incapacity, there are no legal provisions outlining any specific publication requirements. The final decision of the Cabinet of Ministers on the dismissal of the NABU Director must be published on the CMU's website (Art. 52, Law on CMU). **Ukraine is not compliant with the element D. The monitoring team emphasizes the need to ensure publication of the outcomes of different steps in cases where there is more than one step in the dismissal procedure.**

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	✓

In 2022, the tenure of the previous NABU Director ended in accordance with the law in the reporting period. **Ukraine is therefore compliant with this benchmark.**

The pilot report identified the attempts to dismiss the former NABU Director, including through various draft laws and Constitutional Court ruling that the appointment of the NABU Director by the President was unconstitutional, but this decision could not result in the dismissal due to its non-retroactivity and since a decision of the Constitutional Court is not one of the prescribed grounds of dismissal.

112 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)018-e

The monitoring team underlines the importance of filling the legislative gaps identified in the benchmark 3.2. and preventing any new threats to the independence guarantees and performance of duties by NABU Director.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

Element	Compliance
A. The legislation regulates the main steps in the process	✓
B. The information about the outcomes of the main steps is published online	✓
C. The vacancy is advertised online	✓
D. The requirement to advertise the vacancy online is stipulated in the legislation	✓
E. Any eligible candidates could apply	✓
F. The selection is based on the assessment of candidates' merits (experience, skills, integrity)	✓

The legislation regulates the main steps in the process of the selection of the Head of SAPO (Arti. 8-1, Law on Prosecution Service (LPS)) and the selection commission further detailed the process. [113] The main stages of selection process in the LPS include setting up of the selection commission, publication of information about the process, verification of compliance of selected candidates with requirements, commission's decision on the selected candidate and submission for the appointment to the Prosecutor General. **Thus, Ukraine meets the element A of the benchmark.**

Transparency and open competition requirements are set in the law and have been observed in practice in the selection of the Head of SAPO in 2022. The announcement of the competition was published on the PGO's website, any eligible candidate could apply. The results of each step were also published.[114] **Therefore, the elements B, C, D, and E have been met.** As highlighted in the benchmark 3.1., a requirement to publish a justified decision at each stage of the competition procedure (especially when the decision involves voting) would further enhance the transparency and accountability of this process.

The selection is based on the assessment of candidates' merits, experience, skills, and integrity. There are multiple stages to assess candidates' skills, competence, and integrity on pre-defined criteria.[115] Knowledge and general skills tests scores are assigned automatically and other aspects (e.g., professional competence and leadership skills) are evaluated and scored by the selection commission. The commission evaluates the integrity criteria in an interview and decides by voting. [116] **The element F is also met in law and in practice.**

At the same time, the monitoring team cannot neglect what seemed to be a disrupted and sabotaged process of the selection of the SAPO Head, which took over two years to complete. The authorities referred to it as a "saga" and TI Ukraine described various alleged manipulations involved at lengths. [117] Among the impediments were a decision of the District Administrative Court of Kyiv finding the selection procedure

113 https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&_t=fsfile&_c=download&file_id=213309

114https://www.gp.gov.ua/ua/posts/vidkritij-konkurs-na-zajnyattya-administrativnih-posad-u-specializovanij-antikorupcijnij-prokuraturi-2 ; https://www.gp.gov.ua/ua/posts/ogoloshennya-pro-provedennya-vidkritogo-konkursu-na-zajnyattya-administrativnih-posad-u-specializovanij-antikorupcijnij-prokuraturi-3

115 https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&_t=fsfile&_c=download&file_id=211111

116 See benchmark 3.1 for the relevant analysis in relation to the Head of NABU.

117 https://ti-ukraine.org/en/news/new-year-again-and-no-sapo-head/

unlawful, absence of members of the selection commission during its meetings, pending certification and appointment of selected candidate, and more. The impartiality of some members of the selection commission, appointed by Verkhovna Rada, has been questioned due to their alleged links with a person reportedly involved in a high-level corruption case, previously investigated by one of the candidates for the position of the Head of SAPO. The stakeholders also expressed concerns regarding the quality of the integrity assessment, which eliminated all candidates besides two, without justification of non-compliance for many candidates. Furthermore, one candidate withdrew from the competition citing the lack of objectivity of the assessment.[118]

International members of the commission voiced their concerns about the slow process, attempts to influence the result of the competition, and cautioned about leaving the commission. The G7 ambassadors stated that the delays were unjustified and contradicted Ukraine's obligation to appoint the Head of SAPO within the committed timeframe. Ukraine-US joint statement of partnership included a promise for an immediate selection of the SAPO Head, this obligation was also included in the IMF Memorandum. This pressure has finally resulted in the appointment of the Head of SAPO. The delays in the appointment have had a detrimental impact on the enforcement of liability for corruption in Ukraine.

In 2023, as part of the EU macro-financial assistance[119] and IMF program[120], Ukraine committed to enhancing the selection of SAPO management, including the Head of SAPO. A package of draft amendments aimed at improving selection procedures, audit of SAPO's performance and its enhanced independence from the PGO was submitted to Verkhovna Rada. It was rejected by the parliament's committee, but the discussions continue, and the issue is still on the agenda.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Background

NABU has a wide range of statutory powers to conduct quality analytical work, financial investigations, and covert operations. The pilot report found that NABU was proactive in detection of corruption, and transparent and accountable to the public in its work. At the same time, relying on the Security Service of Ukraine (SSU) to conduct wiretapping was highlighted as a challenge.[121] There have been no changes in the reporting period in this regard.

Assessment of compliance

The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently in Ukraine. For NABU, an important power that has not been yet put in operation is independent wiretapping, and it still relies on the Security Service of Ukraine in this matter. Despite the progress in cooperation with banks, accessing bank data remains challenging in practice, but NABU has a direct access to tax and customs databases. Statistics on the work of specialised law enforcement bodies are collected and published in NABU's biannual reports but would benefit from further disaggregation.

118https://zn.ua/ukr/POLITICS/prokuror-majdanivets-vidmovivsja-vid-uchasti-v-konkursi-na-hlavu-sap-cherez-tatarova-tspk.html

119https://economy-finance.ec.europa.eu/system/files/2023-01/Memorandum%20of%20Understanding_EU-UA.pdf (p. 9).

120 https://bank.gov.ua/ua/files/QfUGGzuAdbHzeDS (para. 56).

121https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE (p. 185-186).

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

NABU has powers to apply covert surveillance, intercept communications and conduct undercover investigations (Art. 246.6, 261-264, 271, 272, CPC). However, for wiretapping, in practice, NABU relies on Security Service of Ukraine due to a lack of necessary equipment and the absence of secondary legislation. Under element A of the benchmark, interception can be performed directly by a dedicated investigative body or through (or with the help of) other bodies, as long as such powers are clearly spelled out in the legislation and applied in practice. **Thus, Ukraine is compliant with the element A of the benchmark.**

However, according to the authorities and stakeholders, in practice, the reliance on SSU for wiretapping increases the risks of leaks of information about ongoing investigations, which is impossible to prove if traces of modifications are erased from wiretapped material. Noting that this issue has been pending for some time now, the monitoring team urges Ukraine to amend its secondary legislation as needed and provide necessary technical facilities to NABU for an independent wiretapping.

NABU has the authority to request and receive information from other law enforcement and public agencies, including tax and customs (Art. 17, Law on NABU). It has cooperation agreements with the State Tax Service of Ukraine and State Customs Service of Ukraine, and a direct access to tax and customs information through the relevant registers and databases. NABU representatives met during the on-site visit confirmed that they actively and successfully cooperate with tax and customs authorities.

NABU can also request information from banks (Art. 17, Law on NABU and Art. 62, Law on Banks and Banking Activity) without a court order. A detailed procedure is defined in the secondary legislation of the National Bank of Ukraine.[122] Previously, NABU could not receive data about the recipients' account number due to the conflicting legal provisions. This appears to have been addressed as the National Bank introduced amendments to the procedure for cooperation between the state bodies and banks, enabling NABU to access information about counterparties and their accounts.[123] The National Bank also defined a set of information to be provided to NABU and engaged with banks to resolve the issues with access.

However, there are still challenges in practice: some banks refuse to provide information, provide it with a delay (up to 60 calendar days), provide incomplete information or in a format not suitable for analysis. This causes delays in investigations. The lack of unified registry of bank accounts of natural persons makes the identification of bank accounts and institutions maintaining them difficult. As a result, NABU must send requests to all the banks. Of 67 banks, 5 reject NABU's requests on a regular basis. NABU recently appealed to the National Bank seeking written explanation on how banks should act in response to these information requests.

In money laundering cases, NABU solicits the State Financial Monitoring Service of Ukraine (SFMS) for obtaining data about bank accounts of the individuals. The SFMS can send such requests in an automated manner and receive a response in a short time. NABU also uses bank information that tax authorities

122 https://zakon.rada.gov.ua/laws/show/z0935-06#Text

123 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790 (para. 24).

possess. However, it cannot be used as evidence in court, and NABU has to follow up directly requesting the relevant information. Additionally, NABU can monitor bank accounts in criminal proceedings as a covert investigative measure (Art. 269-1, CPC). Information about the application of this measure has not been provided to the monitoring team, but it was made aware of some impediments in the past.[124]

NABU can also access tax, customs, bank, and other data through the procedure of provisional access to items and documents (Art. 160 CPC). Such access requires a judicial authorization, except during the period of Martial Law, where certain data can be obtained with provisional access only with the approval of the Head of SAPO.

Ukraine is compliant with the element B. However, the monitoring team highlights the necessity to improve, streamline and expedite the access to information held by financial institutions in practice.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	✓
C. A number of terminated investigations with grounds for termination	X

NABU publishes its biannual activity reports that include statistics relevant to the work of SAPO. These reports include information on the number of initiated pre-trial investigations,[125] number of suspects, charged and convicted persons, disaggregated by type of officials based on the categories provided in the Corruption Prevention Law. **Therefore, the elements A and B of the benchmark are met.**

However, these reports do not provide information about terminated investigations with grounds for their termination. The information regarding the number of registered criminal proceedings and terminated investigations is available in the monthly Unified Report on Criminal Offences, published on the website of the Prosecutor General's Office.[126] A separate page of this report includes the information about NABU's pre-trial investigations and terminated cases that are disaggregated with two grounds of termination. However, there is no further disaggregation based on all grounds. **Thus, the element C is not met.**

124https://nabu.gov.ua/sites/default/files/page_uploads/25.04/nabu_assessment_report_en.pdf

125https://nabu.gov.ua/site/assets/files/27960/angl_sayt_final.pdf - Report for 1st half of 2022, see p. 50, https://reports.nabu.gov.ua/site/assets/files/1029/dodatki_sait.pdf - Report for 2nd half of 2022.

126https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

Box 8.1. Impact of war on the work of anti-corruption law enforcement agencies in Ukraine

The impact of Russia's large-scale war on the anti-corruption law enforcement agencies in Ukraine has been profound, presenting unique challenges and necessitating strategic adaptations of the law enforcement work. Despite the war, the law enforcement agencies showed impressive results demonstrating that the fight against corruption has been a top priority for the country.

Investigating corruption during the war requires overcoming numerous challenges, ranging from the security risks to the resource limitations and witness protection:

- One of the primary difficulties lies in the presence of armed groups and volatile security situation in conflict zones, making it dangerous for investigators to operate freely. The National Anti-Corruption Bureau of Ukraine (NABU) faces a key challenge in documenting crimes committed in the territories, which are under the constant threat of shelling. The time of curfew and air raid alerts on the whole territory of Ukraine further complicate search and investigation efforts, limiting entry into premises and causing delays in the investigative process. The destruction of infrastructure and disruption of communication lines during the war also hampered the collection and preservation of evidence. In addition, when the war started, NABU had to destroy materials previously sent to expert institutions in the cities close to the frontline in order to maintain the confidentiality.
- Accessing witnesses and conducting interrogations has proven difficult, as many have moved to other countries, making it challenging to identify and interview them. To overcome logistical challenges, NABU and SAPO embraced technology enhancing investigative capabilities allowing an online interrogation of suspects. However, suspects often get themselves mobilised to military facilities, sometimes to avoid liability, and the defence in criminal proceedings often asks to postpone proceedings.
- Extradition of suspects has become a complex issue, exacerbated by Martial Law and the European Convention on Human Rights, which prohibits extradition to a country in a state of war. Foreign jurisdictions often deny extradition requests, citing concerns about the security of prisons. Even with assurances of detaining extradited persons in the prisons in the safe territories in western Ukraine, the issue remains unresolved, leading to difficulties in bringing suspects to justice. In 2023, there were only two cases in which suspects have been successfully extradited (from Slovakia and Lithuania).

While NABU and SAPO staff cannot be engaged in military activities, except on a voluntary basis, a considerable number of law enforcement practitioners, including 11 SAPO prosecutors (25 % of the SAPO's staff), joined the Armed Forces of Ukraine. To deal with the increased amount of workload, structural reorganization was initiated, including hiring 7 prosecutors. In addition, SAPO conducted an audit of registered cases to deal with the phenomenon of chaotic case registration. This allowed to significantly reduce the number of opened investigations by deleting cases registered without the existence of the elements of crime.

Assessment of non-governmental stakeholders

Overall, non-governmental stakeholders, which contributed to this review, positively assessed the work of the specialised anti-corruption investigative and prosecutorial bodies in Ukraine. The stakeholders did not raise any substantial concerns regarding the independence of NABU or SAPO, except for highlighting isolated instances of certain high-profile corruption cases investigated by bodies outside the jurisdiction of

NABU and SAPO without providing specific examples (the relevant section of the report includes the information provided by the authorities in this regard).

The stakeholders expressed concerns that ARMA had been functioning without a permanent Head for over three years and that the eventual selection was based on the political considerations rather than merits. Stakeholders have also voiced criticism about ARMA's operations in practice and the lack of collaboration with other anti-corruption agencies. The stakeholders raised various practical issues concerning the seizure and management of assets, and proposed ways to address these problems, such as implementing comprehensive pre-seizure planning; establishing a clear procedure for competitively selecting managers of seized assets transferred to ARMA; ensuring transparent and fair procedures for the sale of seized assets and management of seized corporate rights, and prioritizing asset seizure in criminal proceedings. Additionally, the stakeholders emphasized the need to improve the quality of the asset management control through enhanced expertise, establish a mechanism for storage and return of seized assets to their owners, and to improve the accuracy of the information in the recently launched public register of seized assets. A national asset recovery strategy, approved by the CMU on August 1, 2023, and an action plan could serve as a valuable tool in resolving complex issues pertaining to the asset recovery process.

The non-governmental stakeholders generally had a positive appraisal of the selection of the NABU Director, highlighting that the procedure was observed at every stage and the decisions were substantiated and transparent. Regarding the dismissal procedure of the NABU Director, the stakeholders highlighted that the previous attempts to dismiss NABU Director were effectively addressed through existing safeguards. Nonetheless, concerns have been raised about certain problematic grounds for dismissal. Some of these concerns are reflected under benchmark 3.2.

Criticism of the selection procedure of the Head of SAPO referred to an alleged "sabotage" of the process by the selection commission members and unjustified delays in selecting the new Head. Non-governmental stakeholders also challenged the quality of the integrity assessments, that in their view, excluded qualified candidates from the selection process. Civil society representatives also raised concerns about the lack of sufficient guarantees against arbitrary dismissal of the Head of SAPO.

The stakeholders emphasized the importance of ensuring an independent wiretapping by NABU by amending the secondary legislation and implementing the necessary technical facilities. They proposed several policy measures aimed at bolstering the capacity of NABU, including improving plea-bargaining procedures in NABU-investigated proceedings, and establishing an independent forensic examination institution for NABU investigations. Likewise, the stakeholders recommended measures to strengthen SAPO's capacity by designating SAPO as an independent legal entity and granting it a greater autonomy from the Prosecutor General's Office. The stakeholders also identified areas for improvement in the publication of the results of the law enforcement work and the need to produce consistent statistics.

9 Enforcement of Corruption Offences

The specialised anti-corruption bodies demonstrated a remarkable level of enforcement of high-level corruption cases with the number of convictions growing despite the war. In the assessment period, NABU, SAPO and HACC have boosted the fight against corruption with some prominent cases concluded and more ongoing during the on-site visit. Ukraine demonstrated the routine sanctioning of most corruption offences, confiscation of unexplained wealth, and a universal practice of dismissal of officials convicted for corruption. Still, the investigation of money laundering cases has been rare, and there have been no investigations of foreign bribery. The statute of limitations and time limits for pre-trial investigation continue to impede enforcement of corruption cases. Enforcement statistics are collected and published but not in a centralised way. Statistics on execution of confiscation orders in corruption cases are not collected. Some types of confiscation are rarely enforced, or not enforced at all. There have been no successful cases of asset recovery from abroad. Corporate liability exists on paper (quasi-criminal model), but it has not been put in operation. The main deficiencies of the model are the non-autonomous nature of the liability linked to the prosecution of an individual perpetrator, insufficiently dissuasive sanctions, and the lack of a due diligence defence that promotes corporate compliance measures. Ukraine recently became a Participant to the OECD Working Group on Bribery and embarked on a reform to align its legislation and practices with the provisions of the OECD Anti-Bribery Convention.

Figure 9.1. Performance level for Enforcement of Corruption Offences is average

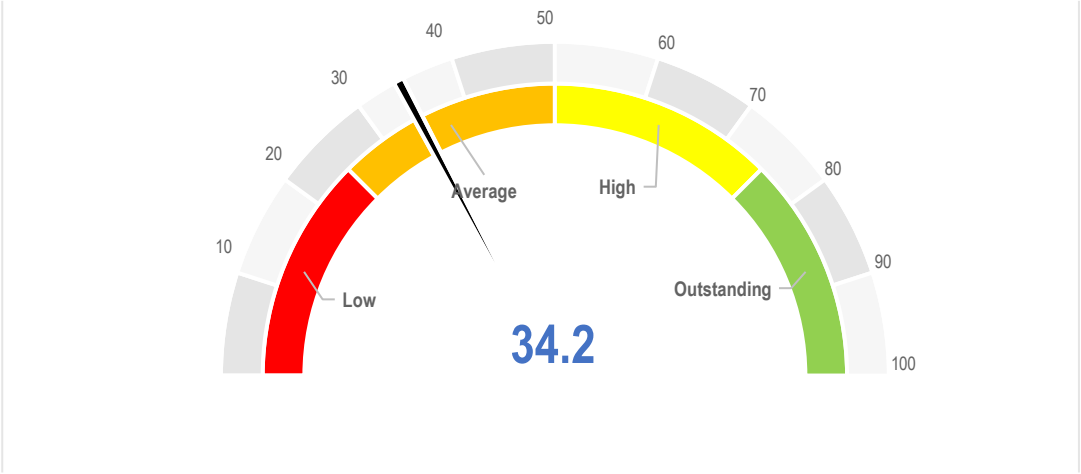
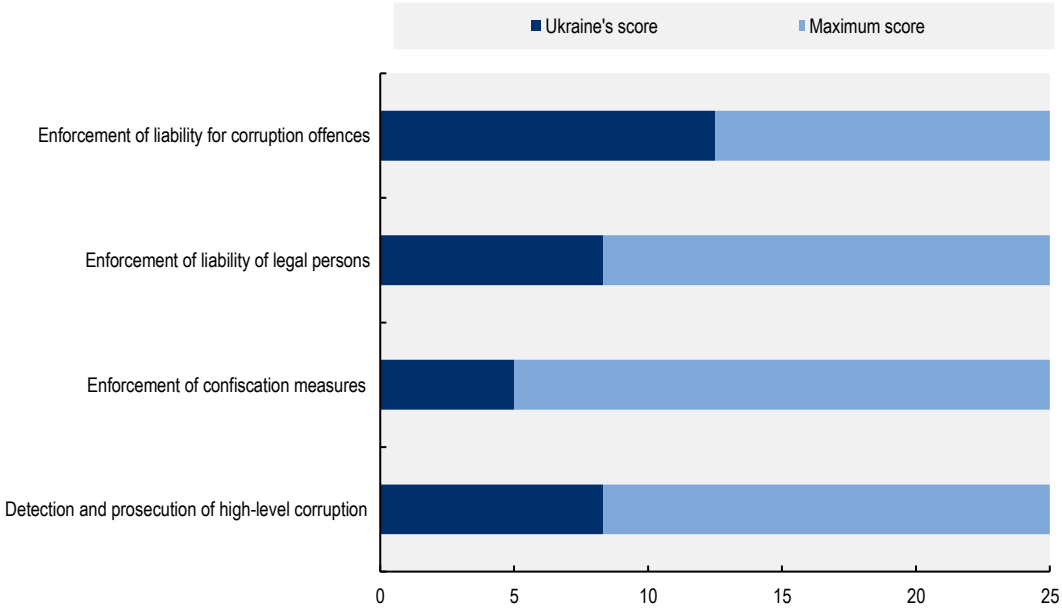


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators



Indicator 9.1. Liability for corruption offences is enforced

Background

Ukraine's track record of enforcing liability for corruption offence, particularly high-level corruption, has been increasing and reached a remarkable level in the reporting period, despite Russia's war against Ukraine. In the previous IAP monitoring rounds, courts tended to release convicts with conditional

sentences, and applying more lenient penalties, primarily fines. This practice has changed in the assessment period.

The pilot report noted that the statute of limitations for misdemeanour corruption offences (3 years) was short for a full pre-trial investigation and trial, often leading to termination of proceedings or release from liability. There have been no changes in the law or practice, but Ukraine is planning to amend the statute of limitations and pre-trial investigation terms.

Assessment of compliance

The anti-corruption law enforcement bodies continued the fight against corruption, improving performance despite the challenges of war. Many high-profile cases were adjudicated in the assessment period. Ukraine has demonstrated the routine sanctioning of most of the corruption offences, confiscation of unexplained wealth, as well as a universal practice of dismissal from office of officials convicted for corruption. Still, the investigation of money laundering cases is rare and there have been no investigations into foreign bribery. The statute of limitations and the time limits for pre-trial investigation continue to impede the enforcement of corruption cases. The enforcement statistics are collected and published but not in a centralised way.

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	✓
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	✓

For this benchmark to be met, the authorities must present three examples of the first-instance convictions in the reporting period for each element (A-F). Ukraine provided conviction statistics, except for the element E, as in the table below. The statistics show an impressive track record of the convictions for corruption offences. However, a significant disparity between the number of convictions for active bribery compared to passive bribery suggests that authorities may need to prioritize prosecuting public officials involved in corrupt practices.

The authorities also provided the relevant case examples (except element E), but the case examples under the element C did not qualify as bribery in the private sector. Most of these examples involved relatively small sums of bribe or undue advantage. In addition, all examples under the element B were about judges requesting, accepting, or receiving bribes. A case presented under the element A involved a HACC conviction of a former SOE official for bribing a NABU detective to terminate a criminal proceeding (USD 100,000 paid in bribes). **Ukraine is compliant with all elements of the benchmark, except elements C and E**.

Table 9.1. General statistics of convicted persons for corruption offences in 2022

Convictions for specific corruption offences	2022
1. Number of persons convicted for active bribery in the public sector	1035

2.	Number of persons convicted for passive bribery in the public sector	127
3.	Number of persons convicted for active and passive bribery in the private sector	25
4.	Number of persons convicted for offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	25
5.	Number of persons convicted for bribery with an intangible and non-pecuniary undue advantage	0
6.	Number of persons convicted for trading in influence	114

Source: Responses to the IAP monitoring questionnaire.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	✓

This benchmark requires a routine application of sanctions for either criminal illicit enrichment or, alternatively, confiscation of unexplained wealth through administrative or civil proceedings. In Ukraine, the legislation foresees both the crime of illicit enrichment (Art. 368-5, Criminal Code of Ukraine) and civil confiscation of unjustified assets (Art. 290-292, Civil Procedure Code). The threshold of approximately UAH 8 million (~USD 221 087) delineates these two procedures: public officials can be held criminally liable if they acquire assets exceeding their legal income by more than 6 500 minimum wages[127], while the civil procedure covers cases where the discrepancy between a public official's legal income and the value of assets falls above a certain threshold (500 minimum wages) but below the limit for the crime of illicit enrichment.

There have been no concluded cases of illicit enrichment in the reporting period. Civil confiscation of unexplained wealth (unjustified assets) was applied by the High Anti-Corruption Court in four cases during the reporting period. In one case, close relatives of a district court judge acquired an apartment and a car for the disposal by a judge. The value of these assets exceeded the legal income of the judge by more than UAH 5 million (~USD 136 397). HACC recognised the apartment as unjustified (but not the car) and ordered the defendant to pay UAH 3.6 million (~USD 98 000). The authorities provided another case example, in which HACC confiscated the funds (UAH 2.3 million and USD 35 000) deposited on the bank account of a deputy head of the National Police as they did not correspond to his legal income.

The monitoring team concludes compliance with the benchmark, recognizing that routine application of confiscation of unexplained wealth in civil proceedings is a commendable enforcement practice.

127 In 2023, for the qualification of an administrative or criminal offence (not the amount of the fine as punishment), the non-taxable statutory minimum wage is UAH 1 342.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

There were no cases of investigations of foreign bribery offences during the reporting period. **Ukraine is not compliant with the benchmark.**

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	✓
B. Money laundering sanctioned independently of the predicate offence	X

The authorities did not demonstrate routine application of sanctions for money laundering with public sector corruption as a predicate offence or money laundering sanctioned autonomously of the predicate offence in the reporting period. **Therefore, Ukraine is not compliant with element B of this benchmark.**

The Government provided three examples of sanctioning for money laundering with public sector corruption as a predicate offence, **showing compliance with element A of this benchmark.** One of the provided cases involved a HACC judgement in which the predicate offence was the abuse of powers (Art. 364 of the CC) committed in complicity. Several real estate properties of a state-owned company were intentionally sold with a lower price to the company controlled by the alleged perpetrators who aimed to pose as bona fide buyers and ultimately resell the properties at market price. These actions were qualified as a criminal offence of laundering of proceeds of crime (Art. 209 of the CC). The defendant was convicted for 5 years with a conditional release and a fine.

The authorities met during the on-site visit explained that, despite a few on-going investigations, there were challenges in enforcement of autonomous money laundering offence. The amendments were introduced in the Criminal Code in 2019, criminalising independent money laundering offence (Art. 209 of the CC),[128] but the law enforcement practitioners are still reluctant to apply money laundering without a predicate offence.

The monitoring team encourages Ukraine to proactively investigate autonomous money laundering offence. Proactive application and awareness raising among the practitioners would help establish a new practice of prosecution of money laundering independently of a predicate offence.

128 https://bit.ly/3rC5NCi (p. 9).

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	✓

To be compliant with this benchmark, the country should demonstrate a universal practice of dismissal of convicted officials from public office, which implies that the legislation includes relevant requirements and there are no known cases of their breach in practice.

Ukrainian authorities explained that more than 30 legal acts regulate the status of different public officials, requiring immediate and unconditional dismissal of a public official, following a conviction for an intentional offence (all corruption offences are intentional under the law). This is applicable to key categories of public officials, including MPs, judges, members of the CMU, public servants, judges, and prosecutors.

Moreover, the law provides an additional sanction of depriving individuals convicted of corruption offences of the right to hold certain positions or engage in specific activities. This sanction can be applied even if it is not explicitly prescribed for a particular offence (Art. 55 of the CC).

The stakeholders did not provide any example of a public official convicted for corruption offence not dismissed from the office in the reporting period.

Given that legislation prescribes dismissal from the public service in case of conviction for a corruption offence, and there were no examples of breach of this rule in 2022, **Ukraine is compliant with the benchmark.**

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

Element	Compliance
A. Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	✓
B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	X
C. The special exemption is not allowed when bribery is initiated by the bribe-giver	X
D. The special exemption requires active co-operation with the investigation or prosecution	✓
E. The special exemption is not possible for bribery of foreign public officials	✓
F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	✓

The Criminal Code provides for a special exemption from active bribery and active trading in influence offences (Art. 354 Part 5, CC) with the safeguards prescribed in this benchmark**, except for elements B and C.**

The authorities clarified that application of the special exemption is not automatic, it is initiated based on a motion of a prosecutor and is subject to a mandatory judicial review, which means that the circumstances of each case must be evaluated. **Ukraine is therefore compliant with elements A and F of this benchmark.**

The special exemption can be applicable only if the perpetrator voluntarily disclosed the offence to a competent authority. This voluntary reporting should be done prior to the authority receiving information about the offence from other sources. However, the provision on special exemption does not prescribe reporting in a short period of time, **therefore, element B is not met.**

The special exemption is applicable to any person who offered, promised, or gave an undue benefit, a bribe-giver who initiated the bribery, thus, **Ukraine is not compliant with element C**.

The special exemption is applicable only if the perpetrator actively facilitates the investigation of a crime committed by the person who received an undue benefit or accepted an offer or promise of the bribe. **This is in line with the standard in the element D.**

The special exemption cannot be applied in cases of active bribery of foreign public officials. **Ukraine is compliant with element E.**

During the on-site visit, the authorities did not recall any instances of practical application of special exemption in the reporting period. Nevertheless, they mentioned the plans to raise awareness about this provision to facilitate reporting of corruption offences.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	X
B. The expiration of time limits for investigation or prosecution	X

The authorities reported the termination of corruption cases by HACC because of both expiration of statute of limitations (four cases) and of time limits for pre-trial investigation (four cases) in 2022. In addition, SAPO informed about four criminal proceedings terminated before issuing a notice of suspicion due to the end of time limits for pre-trial investigation (Art. 219 of the CPC). Civil society also raised concerns over the termination of high-level cases due to the inconsistencies in the interpretation of the above-mentioned procedural time limits.[129] **Ukraine, therefore, did not meet the elements of the benchmark.**

Ukraine is planning to amend the statute of limitations as it continued to create obstacles to the enforcement of liability for corruption offences. During the on-site visit, the law enforcement practitioners highlighted the challenges faced in investigation of complex corruption cases, where international cooperation is involved. Regarding the statute of limitations for misdemeanours, on the other hand, the authorities explained that the statute of limitations did not impact their work, as only few corruption cases qualify as misdemeanours.

A bigger obstacle to the effectiveness of NABU and SAPO work has been the time limits for pre-trial investigation. The relevant provisions of the Criminal Procedure Code were amended multiple times resulting in ambiguous norms leaving the room for different interpretations and leading to inconsistent practice and questions on closing certain proceedings. The issue was especially relevant in joint criminal investigations in which each episode of the case was registered before and after the changes in the relevant articles of the CPC. Furthermore, during the on-site visit discussions, the authorities referred to the Supreme Court's decision which changed the approach to calculation of pre-trial investigation terms creating further difficulties regarding the interpretation and application of the mentioned legal provisions.

129https://ti-ukraine.org/blogs/pidstupna-mina-v-dosudovyh-rozsliduvannyah-yak-popravky-lozovogo-rujnuyut-koruptsijni-spravy/

Furthermore, during Martial Law, time limits in proceedings, where the suspected person is not identified or is missing, are suspended (Art. 615 of the CPC) with no clarity on how and in which cases this exception can be applied.

Representatives of NABU and SAPO confirmed the urgent need to reform procedural aspects related to the time limits for pre-trial investigation. While legislative amendments are pending, there is no uniform opinion on how to resolve this issue.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	✓
D. Types of punishments applied	✓
E. Confiscation measures applied	X
F. Types and levels of officials sanctioned	X

Criminal enforcement statistics are not centralised in Ukraine.

The Prosecutor General's Office annually collects and online publishes statistics, including on the number of criminal proceedings opened and the number of proceedings sent to the court disaggregated by criminal offences (including corruption offences) investigated by all pre-trial investigation bodies in total and by specific bodies (including NABU).[130] **Ukraine is compliant with the elements A and B.**

The State Judicial Administration annually publishes statistics about persons convicted and types of sanctions applied- the **elements C and D are met**. While judicial statistics include information about confiscation measures, these are not disaggregated by corruption offences, **therefore the element E is not met.** The monitoring team is of the view that publication of statistics on the total value of damages caused by corruption as well as types and total number and total value of assets confiscated under each of the corruption offences would be useful for policy analysis.

Regarding element F, HACC publishes statistics that include the number of officials convicted for corruption offences disaggregated by types of officials (civil servants, judges, prosecutors, etc.) and categories of public servants. This is **not sufficient for compliance with the element F**, because the HACC's statistics concern only cases adjudicated by this court, and the general judicial statistics reports do not include disaggregation by the levels of officials for each corruption offence.[131]

The NACP representatives informed during the on-site visit that a new regulation for collection of statistical data was approved in May 2023 (see the next benchmark) which reportedly addresses the requirements of the benchmark, however, the monitoring team did not have an opportunity to examine the regulation which is not applied in practice yet.

130https://www.gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

131 The Guide provides that "the country will be compliant if individual authorities publish relevant information. However, in this case there should be no gaps – if one of the authorities does not publish online annually information required in one of the elements, the element is not met".

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	X

In Ukraine, enforcement statistics for corruption offence is not collected on a central level, and, therefore, **the benchmark is not met.** PGO collects the information about all criminal proceedings (including on corruption offences) and outcomes of pre-trial investigation, while the State Judicial Administration collects the information about the adjudication of cases, including on corruption offences. However, this cannot be qualified as collection of data "on a central level" because these bodies do not have a coherent and comprehensive statistics on all the elements defined in the benchmark 1.8.

In 2022, amendments to the Law on Corruption Prevention were enacted to ensure centralized collection of enforcement statistics on corruption offences by NACP. The law requires that agencies implementing the State Anti-Corruption Programme submit annual statistics to the NACP (Art. 18-3 of the LCP). The data should cover number of registered reports on alleged corruption offences; number of cases sent to the court; number of convictions and acquittals; data disaggregated by the type and level of an official; information about assets confiscated based on the court decision. Based on these amendments, in May 2023, NACP approved a new regulation, which also includes a requirement to collect data on types of punishments applied. However, new data collection system is not operational yet. The centralisation of enforcement statistics requires putting in place a unified methodology of collection and management of relevant data, which has yet to be ensured in practice.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Background

Ukraine introduced the so-called measures of criminal law nature applicable to legal persons (which correspond to a quasi-criminal corporate liability model)[132] back in 2014. The liability extends to corruption offences. The pilot report identified several shortcomings, including non-autonomous nature of corporate liability, the lack of due diligence defence and variety of non-monetary sanctions,[133] and the lack of enforcement. Ukraine has not made any changes in law or in practice since then.

At the same time, a reform has been initiated, as Ukraine was granted a Participant status to the OECD Working Group on Bribery in International Business Transactions in February 2023. To accede to the Anti-Bribery Convention and become a member of the WGB, following its participation period of two years, Ukraine must align its corporate liability with Article 2 of the Convention.

Ukraine has launched a National Taskforce on Co-operation with Working Group on Bribery, mandated with the development of proposals for aligning its legal framework with the requirements of the Anti-Bribery Convention, including on corporate liability. Discussions are ongoing which model of corporate liability would suit the Ukrainian legal system while meeting the requirements of the Convention.

132 See: OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2016-2019, p. 223-224, www.oecd.org/corruption/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf.

133https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE (p. 137).

Assessment of compliance

Corporate liability exists on paper, but it has not been put in operation. The authorities continue to resort to traditional arguments that "unreformed" law enforcement and judiciary may use corporate liability to exert leverage on businesses, extort bribes or other unlawful benefits and that criminal law measures against legal persons are still considered "a new concept", outside the frames of the traditional legal system, 9 years after their adoption. The main deficiencies of the model are the lack of an autonomous liability, dissuasive sanctions, and due diligence defence. Ukraine recently became a Participant to the OECD Working Group on Bribery and embarked on the reform to align its legislation and practices with Anti-Bribery Convention. The monitoring team encourages the authorities to ensure participation of non-governmental stakeholders in these discussions as well as give a due consideration to criminal liability which is a preferred model under international standards or consider reforming the existing model.

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	✓

To comply with the benchmark, primary law must be in place establishing liability (including non-criminal) and sanctions applicable to legal entities for corruption offences.

Ukraine has a "quasi-criminal" liability of legal persons for corruption offences in place. Criminal Code provides that "measures of criminal law nature" (Chapter XIV of the CC) are applicable to a legal person if:

- an authorized person of the legal entity committed in the interest of legal entity offences of, inter alia, money laundering (Art. 209 CC), active bribery in private or public sector (Art. 368-3 and 369 CC respectively), active bribery of person carrying out public function (Art. 368-4 CC), trading in influence (Art. 369-2 CC);
- an authorized person failed to implement measures for corruption prevention foreseen in the law or statutory documents of the legal entity, resulting in the commission of offences, including money laundering, active bribery in private or public sector, active bribery of person carrying out public function, or trading in influence.

Sanctions include a monetary fine, confiscation of company's property, and liquidation of a company. **Ukraine is compliant with the benchmark.**

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

The application of measures of criminal law nature to a legal entity is contingent upon the conviction of a natural person (Art. 96-3 of the CC). The liability of legal persons is not autonomous and is restricted to cases where the natural person, the perpetrator is identified, prosecuted and convicted, in terms of both substantive and procedural criminal law. When applying measures of criminal law nature to a legal entity, the court must take into account, inter alia, the gravity of the crime committed and the degree of the

perpetrator's criminal intent (Art. 96-10 of the CC); proceedings against a legal entity are opened and carried out simultaneously with the relevant criminal proceedings of a natural person, and are closed if criminal proceedings against the natural person have been closed or the person was acquitted (Art. 214 and 284 of the CPC). **Ukraine is not compliant with the benchmark.**

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	X

Monetary sanction applicable to legal persons is a fine (art. 96-7 of the CC). The court determines the amount of the fine considering "illegally obtained undue benefit". In principle, a fine is imposed as a double amount of the undue benefit (bribe) obtained. Therefore, in corruption cases which involve granting or receiving undue benefit, such as active bribery or trafficking in influence, legal persons would be subject to fines of double the amount of the undue benefit to serve as a dissuasive measure. If undue benefit was not received or its amount cannot be calculated, such as in money laundering cases, the Criminal Code provides a scale of fines that can be applied by a court depending on the gravity of criminal offence:

- for a criminal misdemeanour – a fine from 85,000 to 170,000 UAH (EUR 2,171 to EUR 4,342);

- for a minor crime – a fine from 170,000 to 340,000 UAH (EUR 4,342 to EUR 8,684);

- for a grave crime – a fine from 340,000 to 1,275,000 UAH (EUR 8,684 to EUR 32,567);

- for an especially grave crime – a fine from 1,275,000 to 1,700,000 UAH (EUR 32,567 to EUR 43,422)[134].

The pilot report concluded that "the maximum fine for an extremely grave crime is around 49 000 EUR which is not sufficiently severe to have an impact on large corporations".[135] In 2022, this sum in euro is even lower due to the devaluation of Ukrainian Hryvnia. Therefore, the scale of fines may not be sufficiently dissuasive for corruption offences in which the amount of the undue benefit cannot be determined. Furthermore, Article 96-10 establishes general sentencing guidelines, which might not guarantee the proportionality of sanctions when applied to specific legal entities. This highlights the need to more tailored approaches to ensure that the penalties are appropriately aligned with the gravity of the offences committed by legal entities. **Ukraine is not compliant with this benchmark.**

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	X

Only one type of non-monetary sanction – debarment (Art. 17, Law on Public Procurements) – applies to legal entities for corruption offences except for money laundering offence to which confiscation and

134 Sum in EUR is defined based on official currency exchange rate defined by the National Bank of Ukraine for 4 June 2023.

135https://www.oecd-ilibrary.org/docserver/b1901b8c-en.pdf?expires=1685006483&id=id&accname=guest&checksum=2ACD8E1C25FAEA66F60C5EA05731BACE (p. 139.

liquidation are also applicable. At least two non-monetary sanctions are required for the compliance with this benchmark. **Thus, Ukraine is not compliant with it.**

Benchmark 9.2.5.

	Compliance
The legislation or official guidelines allow due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions considering the case circumstances	✓

When applying criminal law measures against a legal person, courts must consider as a mitigating circumstance the measures undertaken by this entity to prevent a criminal offence (Article 96 of the CC). This mitigating factor must be assessed considering the specific circumstances of the case. **Ukraine meets this benchmark.**

However, there is no practice of application of this provision. The authorities met during the on-site visit informed the monitoring team that the reform aimed at introduction of a due diligence defence was still in the design phase. According to the Guide, the defence can be formulated in diverse ways: that the company had sufficient compliance rules and mechanisms and that it did everything in its power to prevent the crime, or that the company had an effective internal controls and compliance programme. Ukraine could consider these formulations during its domestic discussions and provide relevant regulations in law or official guidelines.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	X

Measures of criminal law nature have not been applied to legal persons in Ukraine during the reporting period. Ukraine is encouraged to take necessary steps to ensure the enforcement of liability of legal persons for corruption offences. **Ukraine is not compliant with the elements of this benchmark.**

Indicator 9.3. Confiscation measures are enforced in corruption cases

Background

Ukraine's legal framework includes confiscation of instrumentalities and proceeds of corruption crimes (special confiscation), and civil confiscation of unjustified assets of public officials. Confiscation as a sanction for criminal offence - a reminiscence of Soviet legacy - is still provided by law and applied in practice, however this falls outside the scope of this indicator. Ukraine also has a criminal non-conviction based special confiscation, extended confiscation but it is not enforceable in practice due to the lack of the

relevant procedure,[136] value-based confiscation, confiscation of mixed profits, as well as confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties.

Assessment of compliance

The statistics on execution of confiscation orders in corruption cases are not collected. The practice of application of some types of confiscation regimes is still lacking or scarce. In practice, the authorities tend to use confiscation as a sanction as a key tool, thus creating obstacles for effective mutual legal assistance. There is also no evidence of successful cases of asset recovery from abroad as highlighted in the PA 8.

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	X
B. Proceeds of corruption offences	✓

In 2022, special confiscation was applied by the first instance courts in a total of 575 cases, however, this figure covers all criminal offences and there is no disaggregation by corruption offences.

To demonstrate routine application of confiscation, the government provided three examples of confiscation of proceeds of corruption offences, including an economic advantage obtained directly through the commission of bribery or embezzlement. However, only one example of confiscation of instrumentalities has been provided. **Therefore, Ukraine is not compliant with the element A and compliant with the element B of the benchmark.**

During the on-site visit, the authorities mentioned that in most cases courts apply confiscation as a sanction rather than a special confiscation. The main reason is the simplicity of the procedure as there is no need for prosecution to prove the illicit origin of assets. However, this approach raises issues of proportionality of such confiscation and obstacles for effective mutual legal assistance (see also benchmark 3.2). The monitoring team encourages Ukraine to ensure effective special confiscation instead of applying confiscation as a sanction.

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	X

HACC issued twelve final confiscation orders in 2022. The information about the execution of other confiscation orders is not available. The authorities could not provide percentage of fully executed confiscated orders in corruption cases, as the reporting forms do not allow to single out executive documents regarding confiscation in cases of corruption and corruption-related offences. **Ukraine is**

136 Article 100.9.6-1 of the Criminal Procedure Code envisages confiscation of the property of a person convicted for corruption or money laundering "if the legality of the grounds for acquiring the rights on such property has not been confirmed in court".

therefore non-compliant with the benchmark and encouraged to ensure the collection of relevant data.

During the on-site visit, the authorities explained the difficulties related to the execution of confiscation orders. In cases with partial confiscation of assets as a sanction, it is difficult to sell the confiscated assets and receive any income. In addition, the authorities informed about a case in which the court decision applying confiscation as a sanction was not executed abroad. The reason was the non-proportionality of the confiscation as a sanction, as the measure was applied to all assets of the convicted person. There is a clear need to improve the legal framework regulating different confiscation regimes. The relevant policy discussions should be initiated to enhance effective cooperation with foreign authorities as well as return of confiscated assets from abroad.

Benchmark 9.3.3.

The following types of confiscation measures were applied at least once in corruption cases:

	Element	Compliance
A.	Confiscation of derivative (indirect) proceeds of corruption	X
B.	Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	✓
C.	Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	✓
D.	Confiscation of mixed proceeds of corruption offences and profits therefrom	X

No evidence is available on the application of confiscation of indirect proceeds of corruption, nor on mixed proceeds of corruption, **thus elements A and D are not met**. Both value-based confiscation and confiscation from informed third parties were applied in one case. **Thus, Ukraine is compliant with the elements B and C.** In one case HACC delivered a judgment with the approval of a plea agreement convicting a judge for passive bribery (Art. 368 of the CC). The convict had agreed to a special confiscation in the amount equivalent to USD 7,000 corresponding to the part of the undue benefit obtained but spent. As the initial proceeds of the offence could not be confiscated, the court decided to confiscate a corresponding sum, which can be considered as a value-based confiscation. In another case, HACC applied special confiscation to funds held in a bank account opened on behalf of a third person. The account had been utilized by the convicted person for various transactions involving the proceeds of corruption offence (specifically, embezzlement under Art. 191 of the CC). However, the amount confiscated in this case was low (~USD 87 in total).

The low level of application of diverse types of confiscation measures is explained by the fact that the law enforcement authorities tend to apply confiscation as a sanction without tracing the proceeds of corruption offences.

Benchmark 9.3.4.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences	X
B. Extended confiscation in criminal cases	X

According to the authorities, in 2022, non-conviction based confiscation of instrumentalities and proceeds of corruption offences was applied in 3 cases, while extended confiscation was applied in 28 cases, but the provided case examples did not fall under the categories specified in the elements A and B of this benchmark. **Therefore, Ukraine is not compliant with the elements of this benchmark.**

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	X

Ukraine did not provide any examples of measures taken to ensure the return of corruption proceeds from abroad. The Ministry of Justice, which is a central authority for international cooperation in criminal proceeding during trial, indicated that there were no incoming mutual legal assistance requests for the return of income received on corruption offences. Additionally, no outgoing requests for such returns were made by the courts during the reporting period. PGO mentioned that statistical data on this matter is not collected, while NABU referred to the absence of requested information. During the on-site visit, one case of refusal to execute a court decision with confiscation as a sanction for corruption offence was mentioned. Neither the successful return of corruption proceeds from abroad, nor the routine sending of requests to confiscate corruption proceeds (i.e., at least three cases) have been demonstrated. **Therefore, Ukraine is not compliant with the elements of this benchmark.**

Indicator 9.4. High-level corruption is actively detected and prosecuted

Background

The pilot report highlighted Ukraine's unprecedented leap in tackling high-level corruption through the work of the dedicated independent investigative, prosecutorial, and judicial institutions. With the HACC actively concluding cases, an increase in convictions for high-level corruption has become significant. However, political and other undue interference in investigation and prosecution and adjudication of high-level corruption cases have been noted as a major impediment, according to the pilot report. In the reporting period, the specialized anti-corruption institutions have demonstrated resilience and continued to function, albeit with adaptations necessitated by the new circumstances of wartime.

Assessment of compliance

High-level corruption has been actively detected and prosecuted in the reporting period, with some prominent cases concluded and ongoing during the on-site visit. The conviction rates have significantly increased despite the war. With the growing workload, NABU's resources have become scarce requiring immediate attention. An increase of staff is needed for SAPO and HACC as well. Providing necessary resources to these institutions is vital to ensure their continued effectiveness in combatting corruption.

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

In 2022, HACC, which has a jurisdiction over high-level corruption cases, convicted 23 persons for aggravated bribery offences, and 11 of them were sentenced to imprisonment, which is less than a half. However, this does not represent a full picture of punishments for high-level corruption, as it does not include statistics of general courts. Due to the gap in the national statistical system, it is impossible to summarize the number of sentences imposed in high-level cases. **As the monitoring team was not provided with the relevant information, Ukraine is not compliant with the benchmark.**

Non-governmental stakeholders warned about application of probational release in cases concluded with plea agreements by HACC, using softer alternatives or granting of conditional release.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	X
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	X
D. Does not impede the investigation and prosecution of corruption offences in any other way	X

Immunity of high-level officials continued to be an obstacle for criminal investigation and prosecution of corruption offences in the reporting period.

The legislation provides special procedures for criminal proceedings involving certain categories of public officials, including judges and MPs (Art. 480 of the CPC).[137]

137 According to Article 480 of the CPC, a special procedure for criminal proceedings applies to MPs, judges, judges of the Constitutional Court of Ukraine, judges of the High Anti-Corruption Court, as well as jurors during their performance of duties in court, Chairman, Deputy Chairman, member of the High Council of Justice, Chairman, Deputy Chairman, member of the High Qualification Commission of Judges of Ukraine; a candidate for the President of Ukraine; Commissioner for human rights of the Verkhovna Rada of Ukraine; Chairman, other members of the Accounting Chamber; deputies of the local councils; lawyers; Prosecutor General, his deputy, prosecutor of the Specialized Anti-Corruption Prosecutor's Office; Director and employees of the National Anti-Corruption Bureau of Ukraine.

As regards judges, in 2022, immunities were not lifted as the High Council of Justice (HCJ), authorized to lift them, was not functional until then. For example, in a criminal proceeding on an alleged passive bribery by a judge, NABU issued a notice of suspicion in September 2022 and HCJ considered the motion only in February 2023.[138] Following its launch, HCJ has been prompt in lifting immunities, and already in the first half of 2023, six judges were convicted for corruption offences. In addition, in 2022, HACC convicted nine judges based on the proceedings started in the previous years.

Regarding the MPs, even though the amendments introduced in 2020 removed the requirement for the Verkhovna Rada to provide its approval, neither NABU nor SAPO can initiate a case (enter information in the registry to open a case) on its own. Such cases must be dealt with by the Prosecutor General, this includes opening a case and taking procedural decisions, such as covert investigative measures, detention, arrest, and any other measures that may restrict rights and liberties of MPs (Art. 482-2 of the CPC). This, in practice, has impeded effective investigation and prosecution of MPs during the pilot monitoring. NABU and SAPO confirmed that the situation improved after the appointment of the Head of SAPO who has the right to independently charge MPs with suspicion of committing a crime. However, the Office of the Prosecutor General on several occasions obstructed NABU's requests to conduct investigative actions in cases involving MPs. According to the authorities, during the reporting period there were at least two cases where the Prosecutor General did not authorize searches of MPs' property without providing any justification. Moreover, in September 2022, a motion on application of a bail to an MP, along with several additional procedural restrictions, was returned to NABU detectives because it had not been preliminary approved by the Prosecutor General. Non-governmental stakeholders also provided examples of cases where the criminal proceeding against an MP had not been started in due time. Thus, the procedures on lifting immunities of MPs are not sufficiently detailed and clear criteria are lacking, and in the reporting period there were delays in lifting immunities of MPs.

Therefore, **Ukraine is not compliant with any of the elements of this benchmark.**

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	✓

The monitoring team is not aware of any public allegation of high-level corruption that have not been reviewed or investigated, neither of any instances of not opened or closed cases that have not been explained to the public in 2022. **The benchmark is met.**

138https://hcj.gov.ua/doc/doc/39268

Box 9.1. NABU-SAPO-HACC: unprecedented success stories

Amidst the war, Ukraine's National Anti-Corruption Bureau (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO) are making headlines for their extraordinary accomplishments. NABU has been detecting high-level cases involving sitting politicians, working hand in hand with SAPO to prosecute cases resulting in convictions by HACC. The achievements of the specialised anti-corruption law enforcement agencies in the reporting period marked an unprecedented milestone in Ukraine's modern history.

Case of the Chairman of the Supreme Court

In May 2023, NABU and SAPO exposed the Chairman of the Supreme Court at the moment of receiving a second tranche of a bribe. The scheme was discovered thanks to the penetration of the NABU undercover detective inside the criminal group. The investigation revealed that a Ukrainian businessman, unhappy with a court decision, conspired with a lawyer from a Kyiv bar association who had connections with the Supreme Court judges. Between March and April 2023, the businessman transferred USD 2.7 million to the lawyer, with USD 1.8 million going to the Supreme Court judges, and the remainder as payment for mediation services. Ultimately, in April 2023, the Supreme Court ruled in favour of the businessman. Subsequently, both the Chairman of the Supreme Court and the lawyer received notices of suspicion for involvement in large-scale bribery (Art. 368, Part 4 of the CC). The pre-trial investigation is ongoing.

Case of the Deputy Minister of Community Development, Territories, and Infrastructure

In January 2023, NABU detained the Deputy Minister of Community Development, Territories and Infrastructure of Ukraine. This development came in the wake of an ongoing investigation, which was initiated by NABU in September 2022. The investigation revolves around allegations of corruption related to the Deputy Minister (dismissed from office a day after detention). He is suspected of advocating for overpriced contracts with controlled companies for equipment purchases (electricity generators), which were part of a government programme. NABU conducted a covered investigation, including surveillance, audio/video recordings, and phone tapping, leading to the Deputy Minister's arrest. The pre-trial investigation is ongoing.

Case of the Former Deputy Minister for Temporarily Occupied Territories and Internally Displaced Persons

In August 2019, NABU exposed and arrested the former Deputy Minister for Temporarily Occupied Territories (TOT) and his "assistant" during the receival of the second tranche of a bribe. According to the investigation, the former Deputy Minister promised to the representatives of the private company to settle two legal issues in exchange for USD 100 000. Later the amount of the bribe was reduced to USD 80 000. His plan hinged on reaching out to the ex-deputy prosecutor general, who, in a cascading chain of influence, would exert pressure on the head of the Civil Court of Cassation, subsequently affecting the decisions of the court's judges. In May 2020, SAPO sent the case to the court. In February 2022, HACC found the former Deputy Minister guilty of inciting bribery and fraud, sentencing him to 10 years in prison and confiscation of property.

Assessment of non-governmental stakeholders

Non-governmental stakeholders confirmed that the specialized agencies continued to enforce liability for corruption in the reporting period, despite Russian full-scale military aggression against Ukraine. Besides the challenges of the secondment of staff to the military and intelligence units, some of the offences could

not be enforced due to the restrictions during the Martial Law (offences on false declaring or non-submission of declaration, see PA-2).

Regarding the prosecution of corruption offences, the stakeholders perceive that implementation of various sanctions was effective. However, concerns were raised about the increasing application of conditional release by SAPO in cases with plea agreements, which are approved by HACC. Substituting sanctions with softer alternatives or granting conditional release appears overly lenient in the view of non-governmental stakeholders.

Non-governmental stakeholders also raised concerns about the lack of enforcement of corporate liability for corruption crimes and the lack of involvement of civil society and business community in the policy discussions on this issue.

In addition, stakeholders recommended to improve the effectiveness of anti-corruption investigations in Ukraine, including by improving legal framework on confiscation, statute of limitations and investigation time limits, and by consolidating scattered statistics on corruption offences.

Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The report assesses Ukraine's anti-corruption reforms against a set of indicators, benchmarks and their elements under five performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. It analyses Ukraine's efforts to amend laws, build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement.

Funded by the European Union

PDF ISBN 978-92-64-33666-7

9 789264 336667