

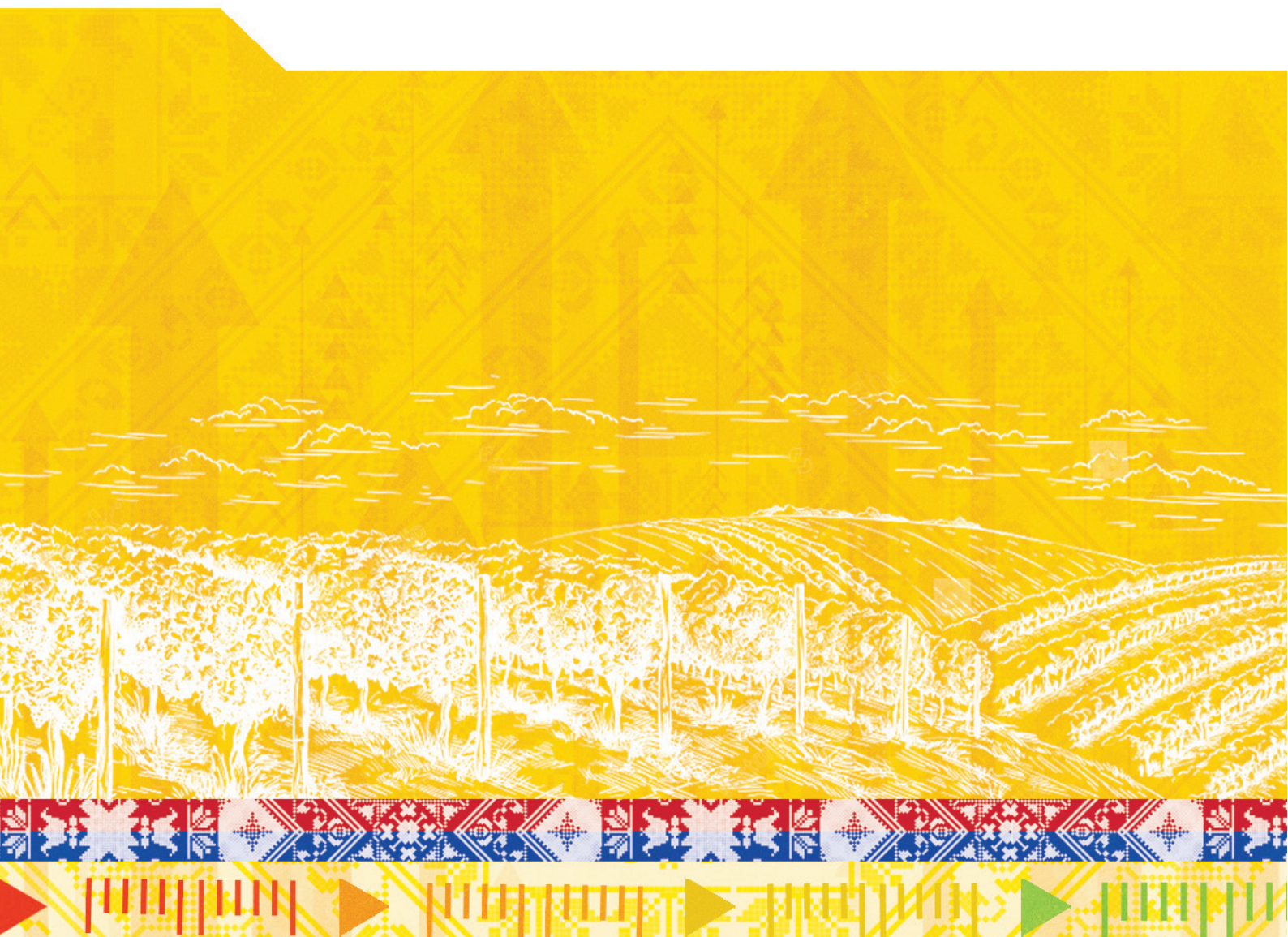
FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA



ANTI-CORRUPTION REFORMS IN MOLDOVA

5TH ROUND OF MONITORING OF THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

PILOT



Anti-Corruption Reforms in Moldova

Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan



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Foreword

This pilot monitoring report was prepared within the framework 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).

The programme covers ten countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine and Uzbekistan. Other countries in the region, OECD countries, international organisations and non-governmental partners participate in the implementation of the IAP as experts and donors.

The first four rounds of monitoring under the IAP were completed in 2019 and prepared the ground for the 5th round of monitoring using newly developed, indicator-based methodology. This pilot report, along with other pilot reports on Armenia, Azerbaijan, Georgia and Ukraine tests the new monitoring tool which comprises indicators, a guide to the indicators and the results-based monitoring methodology before the launch of the 5th round of monitoring.

This report is supported by the OECD component of the EU for Integrity Programme which covers Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

The [Pilot Performance Indicators](https://www.oecd.org/corruption/anti-bribery/corruption/acn/istanbul-action-plan.htm) for the 5th round of monitoring adopted by the OECD/ACN Steering Group in May 2020 and amended in November 2020. The pilot monitoring covered 13 Performance Areas comprising performance indicators and benchmarks. Indicators and pilot procedures are available at <https://www.oecd.org/corruption/anti-bribery/corruption/acn/istanbul-action-plan.htm>.

The pilot monitoring team for Moldova included: Andrei Furdui (Romania), Robert Sivers (Ukraine), Aneta Arnaudovska (Republic of North Macedonia), Anca Jurma (Romania), Tetyana Korotka (Ukraine), Oleksandr Abakumov (Ukraine), Cornel Calinescu (Romania). EBRD contributed into the monitoring of Performance Area seven – Integrity in Public Procurement. From the OECD/ACN Secretariat, Tanya Khavanska was team leader for the pilot monitoring, Erekle Urushadze and Alice Berggrun were also members of the team, Thea Chubinidze provided administrative support, Arianna Ingle provided communications and editorial support and Olga Savran provided the guidance to the completion of the report during the postponement of the pilot.

The national coordinator of Moldova for the pilot monitoring was the National Anti-Corruption Center (NAC) (Valeriu Cupcea and Stela Rusu coordinated on behalf of NAC with OECD).

The pilot assessment of Moldova was launched in December 2020. Moldova provided replies to the questionnaire and supporting materials (laws, statistics, etc.) in March 2021. The virtual on-site visit to Moldova took place on 2-14 June 2021 and included sessions with governmental and non-governmental representatives. Civil society organisations, business and international representatives provided replies to the monitoring questionnaire, participated in the on-site visit and commented on the draft assessment report. During the plenary meeting of the OECD/ACN in October 2021, Moldova requested additional time to complete the bilateral negotiation of the report. The plenary therefore decided to postpone the adoption until the end of 2021. The report was adopted on 17 January 2022 through written procedure.

Executive summary

The pilot 5th round monitoring assessed Moldova in 13 areas of anti-corruption activities (performance areas) split into indicators, which, in turn, consist of benchmarks. According to the pilot procedure, the scores are not made public. The assessment is based on the pilot monitoring indicators and methodology approved by the participating countries and available on the OECD/ACN website¹.

The main strengths and weaknesses are shown below. More details on the level of compliance with performance indicators and benchmarks follow in the report.

Strengths Indicators with the highest score	Weaknesses Indicators with the lowest score
The anti-corruption policy is up-to-date, evidence-based and includes key corruption risk areas	Effective mechanisms are in place to ensure that whistleblower protection is applied in practice
The anti-corruption policy development is inclusive and transparent	The public is aware of and has trust in existing protection mechanisms
Regular monitoring and evaluation of the anti-corruption policy is ensured	Judicial tenure is guaranteed in law and practice
Unbiased and vigorous enforcement of conflict-of-interest regulations is ensured	Appointment and promotion of prosecutors are based on merit and clear procedures
Asset and interest disclosure applies to high corruption risk positions	Assignment of cases among prosecutors is transparent and objective; prosecutors can challenge orders they receive
Distribution of cases among judges is transparent and objective; judicial decisions are open to the public	Dissuasive and proportionate sanctions are enforced for procurement related violations
Public procurement complaints are addressed	Business integrity
Statute of limitations period and investigation time limits do not impede effective corporate liability	Enforcement of corruption offences
The functions of identification, tracing, management and return of illicit assets are performed by specialised officials	Investigation and prosecution of high-level corruption
Identification and tracing of corruption proceeds are effective	The anti-corruption specialisation of prosecutors is ensured
	The staff of the specialised anti-corruption investigative body is impartial and autonomous from external and internal pressure

¹ Istanbul Anti-Corruption Action Plan 5th Round of Monitoring [“Pilot Overview and Procedures”](#) (2021); [“Pilot Performance Indicators”](#) (2021)

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ACRONYMS

AC	Anti-Corruption
CAN	Anti-Corruption Network for Eastern Europe and Central Asia
AEO	Authorized Economic Operator
AIS	Automated Information Systems
AML	Anti-Money Laundering
AMO	Asset Management Office
API	Association of independent press
APO	Anti-Corruption Prosecutor's Office
ARO	Asset Recovery Office
ATU	Autonomous Territorial Unit
CARA	Criminal Asset Recovery Agency
CARIN	Camden Asset Recovery Inter-Agency Network
CC	Criminal Code
CFT	Combating the Financing of Terrorism
COI	Conflict of Interest
CPC	Criminal Procedure Code
CSO	Civil Society Organisation
DNA	National Anti-Corruption Directorate of Romania
EBRD	European Bank for Reconstruction and Development
EU	European Union
FIU	Financial Intelligence Unit
GAJ	General Assembly of Judges
GPA	Agreement on Government Procurement
GPO	General Prosecutor's Office
GRECO	Group of States against Corruption
IAP	Istanbul Anti-Corruption Action Plan
ICJ	International Court of Justice
IDIS	Institute for Development and Social Initiatives
IFMP	Integrated File Management Program
IPRE	Institute for European Policies and Reforms
JIT	Joint Investigative Team
LRCM	Legal Resources Centre from Moldova
MDL	Moldovan Leu
MLA	Mutual Legal Assistance
MoJ	Ministry of Justice
MP	Member of Parliament
NAC	National Ant-Corruption Centre
NASC	National Agency for the Settlement of Complaints
NCFM	National Commission for Financial Markets
NGO	Non-governmental organisation
NIA	National Integrity Authority
NIAS	National Integrity and Anti-Corruption Strategy
NIJ	National Institute of Justice
OECD	Organisation for Economic Co-operation and Development

PG	Prosecutor General
PI	The Prosecutor's Inspection office
PPA	Public Property Agency
POCOCSC	Prosecutor's Office for Combating Organized Crime and Special Cases
SC	Supreme Court
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SCP	Superior Council of Prosecutors
SFS	State Fiscal Service
SIENA	Secure Information Exchange Network Application
SOE	State-Owned Enterprise
TI Moldova	Transparency International Moldova
UNDP	United Nations Development Programme

Country Assessment

Introduction

Moldova joined the Istanbul Anti-Corruption Action Plan, a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia in 2019, and agreed to participate in the pilot of the 5th round. This report is the first comprehensive assessment of Moldova's anti-corruption framework and practices made by the ACN.

Moldova has updated its anti-corruption policy documents regularly over the last decade. The most recent strategy (adopted in 2017) covers the main high-risk areas and sectors. It is based on a review of appropriate evidence, including an analysis of the previous strategy's implementation and various surveys and studies, and was developed through an inclusive process of consultation with key stakeholders, including CSOs. There have been problems in terms of the implementation of the strategy, and only around half of the activities from the corresponding action plan were fully implemented by the end of 2020. The Secretariat in charge of coordinating the implementation is understaffed but has performed commendably in terms of preparing regular implementation reports, based on both outcome and impact indicators. External evaluations by CSOs have also been used to assess progress. The reports, however, lack information about the funds spent on the implementation.

Moldova's legislation requires the country's officials and civil servants to report conflicts of interests and establishes procedures for their resolution but these procedures are not sufficiently clear. The legislation applies to all relevant public officials but there are no special regulations for MPs, members of the government and of local and regional councils. The National Integrity Authority (NIA), which is the main institution responsible for enforcement is currently understaffed. The authorities have been responsive to public allegations of conflict of interests and, overall, have a solid track record of responding to violations. Significant gaps in terms of addressing violations concerning gifts and post-employment rules remain, and it is not clear to what extent criminal penalties are applied in the most serious cases. The NIA publishes important information (including statistics) on enforcement but some types of significant data are not available.

Moldova's legislation extends asset and interest disclosure requirement to all relevant persons and high-risk positions. While the scope of disclosure is quite broad, it does not cover some important types of information, such as expenditures, virtual assets, beneficial ownership of assets, and ownership of trusts. The declarations are filed and published through an online electronic platform, although the publication excludes some important information about physical assets. The data is not published in a machine-readable format and the platform does not have a built-in system of "red flags." A large number of asset declarations is reviewed by the NIA every year, although only a minority of these undergo thorough verification. In addition, NIA's understaffing could have a negative impact on the quality of verifications. Moldova has a solid track record of sanctioning officials for non-submission and late submission of asset and conflict of interest declarations. A significant number of cases have also been forwarded to the law-enforcement authorities for further investigation. However, no statistics are available concerning the

number of verifications that have resulted in sanctions for illicit enrichment and provision of false information in the asset declarations.

The legal framework on the protection of whistleblowers extends to most potential whistleblowers from both the public and the private sectors and provides for the possibility of reporting through different channels. The law prohibits retaliation against whistleblowers and contains safeguards against the disclosure of their identity, although some of the relevant provisions are not sufficiently clear and leave room for interpretation that could harm whistleblowers. A number of important protection measures, such as consultation, state legal aid, compensation, and medical and psychological aid are also missing from the law. Anonymous whistleblower reports are not allowed. The National Anti-corruption Centre and the People's Advocate (ombudsman) are the designated central bodies responsible for receiving whistleblower reports and providing whistleblower protection respectively. However, they do not have sufficient numbers of dedicated staff working on these issues, while the ombudsman also lacks appropriate legal powers. Consequently, overall public trust in the system appears to be low, as demonstrated by the small number of registered whistleblower reports. There is no authority responsible for the collection and analysis of data on whistleblowing and whistleblower protection, so no comprehensive statistics are available either.

Moldova's judiciary has undergone considerable changes in recent years, including significant changes of key legislation, and the process of reform was ongoing as this report was being prepared. Currently, judicial tenure is not sufficiently guaranteed in law and practice. Political bodies are still involved in the judicial appointment process, which is of special concern in the case of the Supreme Court of Justice. The decisions of the Superior Council of Magistracy (SCM) are publicly available, but there is no wide perception that SCM is impartial and independent. Judicial budget is relatively well secured and appears to have grown over the last five years. However, the filling of the vacancies for judicial positions has been halted. While judicial salaries are of reasonable level compared to other professions with similar levels of responsibility, remuneration levels of court staff and judicial assistants are too low to offer them incentives for staying in these positions. Case distribution among judges is transparent and judicial decisions are open to the public. While judges have access to due process in disciplinary proceedings, some grounds for disciplinary liability were found to be vague and criminal liability for judicial decisions is possible under the Moldovan Criminal Code. Overall, the application of disciplinary and dismissal procedures is not perceived impartial by non-governmental stakeholders and routine application of proportionate and dissuasive sanctions is lacking.

In terms of the independence of public prosecution service, the Prosecutor General of Moldova is appointed for a relatively long term without the possibility of reappointment. While dismissal of the Prosecutor General is based on clear and objective criteria, the procedure itself requires clarification. The Superior Council of Prosecutors plays an important role in the self-administration of the prosecution system. It has broad responsibilities for the functioning of the prosecution service, including all questions of career and discipline of prosecutors. However, transparency of its work and impartiality are not fully ensured in practice. Although the legal procedures for both recruitment and promotion are in general in line with the international standards, concerns have been raised that the prosecutors lack individual independence and nepotism and diverse affiliations negatively impact the activity of the prosecution service and the public perception about it. This extends also to the process of recruiting and promotion. Public perception of corruption among prosecutors being properly investigated is low. Similarly, clear grounds and procedures for disciplinary liability and dismissal of prosecutors are stipulated in the law but their application is not perceived to be impartial. The budget of the public prosecution service appears to be reasonable. However, the system of remuneration of prosecutors needs to be thoroughly analysed to ensure the autonomy of the prosecutors and reduce the risk of corruption, as well as to enhance the motivation of the prosecutors.

The legislation designed to ensure integrity in public procurement covers most areas of economic activities, although there are important gaps, including procurement by SOEs among others. The law establishes competitive bidding as the default method of public procurement but the existing exceptions to this rule are not sufficiently narrow and specific. There is an electronic procurement platform in place but only part of procurement is currently conducted through it. The mechanism for the review of procurement complaints is effective and can process cases within a reasonable time frame. No statistics are available regarding the sanctions imposed for the violations committed in public procurement. Persons and legal entities convicted for corruption are prohibited from participating in public procurement but this provision appears to be poorly enforced in practice. Publication of data on public procurement is piecemeal as only some types of information are collected and released centrally, and it is left to individual procuring bodies to publish others. The procurement agency's annual reports contain some but not all relevant types of data.

The legal framework on business integrity contains significant gaps and there are corresponding problems in practice. There is no general Code of Corporate Governance; the country's financial regulator has adopted one, which is only mandatory for the listed companies that have the status of "publicly significant entities." There is a lack of evidence of appropriate monitoring by the relevant regulators of the performance of company boards in the area of corruption risk management. With a recent legislative amendment, companies are required to disclose their beneficial owners when they register in Moldova, although it is not clear whether this provision is enforced effectively in practice. The government has not yet implemented any incentives designed to prompt companies to develop internal anti-corruption mechanisms and ensure integrity in their operations. There is also no business ombudsman or a similar office in Moldova. The law governing the activities of Moldova's state-owned enterprises (SOEs) establishes some requirements concerning the appointment of boards and management, as well as the responsibilities of the boards in terms of oversight and the transparency. However, these are not implemented effectively in the country's largest SOEs.

It is difficult to assess the enforcement of corruption offences in Moldova due to the lack of information on final convictions for the relevant categories of offences. While sanctions prescribed in the law appear to be proportionate and dissuasive, there are gaps in terms of their application in practice. The time limits for conducting investigations are sufficient for effective enforcement. However, immunities may impede the effective investigation and prosecution of corruption crimes committed by persons with immunity, especially MPs. The statistics are collected but in a dispersed manner and do not appear to be properly analysed or made accessible in full.

Moldova established liability of legal persons for corruption offences in law fairly effectively, including its broad scope and autonomous nature. Monetary sanctions are proportionate and dissuasive and non-monetary sanctions are also foreseen in the law. Due diligence defence is not available however and there are no sentencing principles for legal persons. Statute of limitations and time limits for investigations seem to be adequate. However, the problem is that all these exist so far on paper only. Moldova demonstrated no enforcement of liability of legal persons for corruption offences.

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). It now has the staff of 32 persons and the mandate covering all relevant functions. CARA has a high track record of the use of parallel financial investigations in corruption cases. Its authorized staff have direct access to the necessary databases and they use relevant mechanisms to obtain bank data without obstacles. However, the number of cases of assets recovered from abroad in the past three years is still very limited. There is no regular audit of the managed assets and a database of assets placed under CARA's management is still in design form, although Moldova has taken considerable steps to set up such database and to put a provisional mechanism in place. Seizure and confiscation are reportedly applied in the first instance but there is no information in regards to final

decisions or executed orders. Moreover, there is no track record of cases of more complicated confiscation measures, even at first instance level (indirect proceeds, value-based confiscation, mixed proceeds, non-conviction based or extended confiscation). Comprehensive statistics are not published or analysed.

The notion of high-level corruption appears to be not clearly understood by Moldova's law enforcement institutions. There is no indication that the authorities analyse such cases separately from other crimes or use lessons learned from the convictions in high-level corruption for the formulation of anti-corruption policy or legislation. The competence of the Anti-Corruption Prosecution Office (APO) is broader than high-level corruption and limited to prosecuting the cases in first instance courts. APO does not collect statistics on final conviction in the cases they are investigating and prosecuting. The National Anti-Corruption Centre (NAC) has an analytical department which publishes analytical studies regarding the phenomenon of corruption but has produced no study specifically on high-level corruption. There is no evidence that the high-level corruption cases have been actively detected or investigated. Public allegations do not seem to always prompt a response from the law enforcement community and their reputation is not positive in this regard.

As far as specialized anti-corruption bodies are concerned, two institutions in Moldova are assigned the role of investigating corruption offences – the NAC and the APO. Both the last Chief Prosecutor of APO and the current Director of NAC were selected through a transparent and competitive procedure. However, the Chief Prosecutor of APO has been suspended and the Prosecutor General has appointed two interim acting heads. As for the selection of the NAC director, the key role in the selection procedure is played by a political body, the Legal and Immunities Commission of the Parliament. Resources of the specialised investigators and prosecutors are not sufficient. In 2020, a substantial number of cases had to be reallocated from APO to avoid case backlogs. In addition, APO does not have capacity to conduct its own intelligence gathering activities. Annual reports of NAC and APO contain detailed statistics, although some information is missing, especially regarding high-level corruption. No external evaluation of the specialised investigative bodies has been performed and public oversight mechanisms are not in place. There is general perception among the NGOs and the media that specialised agencies need to focus on high-profile corruption and show enforcement results in such cases. The specialized anti-corruption law enforcement bodies, especially APO, need to do more in terms of public outreach and explaining the results of their work, including their decisions to close or not to open or pursue investigations in certain, especially high-profile corruption cases.

1 Anti-Corruption Policy

Moldova has updated its anti-corruption policy documents regularly over the last decade. The most recent policy document (strategy) was adopted in 2017 and covered the period through 2020. The strategy is structured according to Transparency International's National Integrity System methodology and covers the main high-risk areas and sectors. It was developed through a review of appropriate evidence, including an analysis of the previous strategy's implementation and various surveys and studies. The policy was developed through an inclusive process of consultation with key stakeholders, including CSOs.

However, there have been problems, in terms of the implementation of the 2017-2020 strategy, and only around half of the activities from the corresponding action plan were fully implemented by the end of 2020. The Secretariat in charge of coordinating the implementation is understaffed and currently has only one full-time employee. It has performed commendably in terms of preparing regular implementation reports, based on both outcome and impact indicators. External evaluations by CSOs have also been used to assess progress. The reports, however, lack information about the funds spent on the implementation. Focal points in the implementing agencies have generally fulfilled their duties in terms of reporting, although the fact that their status is not formalized has led to some problems in terms of coordination.

Indicator 1.1. The anti-corruption policy is up-to-date, evidence-based and includes key corruption risk areas

Background

From a formal perspective, the Republic of Moldova does not currently have an anti-corruption policy document. The National Integrity and Anti-corruption Strategy (NIAS) was adopted in 2017 and covered the period from 2017 to 2020. A Parliamentary committee issued a statement, which was not made public, addressed to the director of the National Anti-corruption Centre, supporting the proposal to extend the application of the 2017-2020 strategy into 2022, but no formal decision of the Parliament to this end had been taken at the time of writing the present report. Previous two strategies covered the years 2005-2010 and 2011-2016 respectively. Throughout this report, the 2017-2020 NIAS will be used as a reference point for the assessment of the benchmarks related to the country's AC policy document.

Assessment of compliance

Benchmark 1.1.1.

The policy is based on evidence, it is regularly reviewed and updated as necessary, and policy documents are published online

The strategy cites multiple sources on which it is based, including a “preliminary” assessment of the implementation of the 2011-2016 strategy (a final assessment report was also published² but it was not used for the drafting of the 2017-2020 strategy), international rankings, studies by local and international organizations, and public opinion surveys. The strategy refers to Transparency International Moldova’s (TI Moldova) National Integrity System assessment as a key source, although, according to TI Moldova, the assessment was conducted in 2013-2014 and was outdated by the time the strategy was adopted in 2017.

The strategy has been published online and can be accessed freely. It was subject to yearly reviews and the monitoring reports were published on the website of the National Anti-Corruption Centre (NAC).

Benchmark 1.1.2.

The policy addresses high corruption risk areas and sectors

Since the strategy is structured according to Transparency International’s National Integrity System methodology, its primary focus is on institutions rather than sectors. For this reason, the strategy’s main sections are devoted to major institutions such as the legislature, the judiciary, the executive branch, the ombudsman, etc. At the same time, the strategy provides for the adoption of sectoral action plans in nine areas, including tax and customs, procurement, healthcare, and education. The sectoral action plans can be found online on various governmental websites³. The nine sectors were identified through consultations with experts and based on public opinion surveys, although no risk assessment was conducted specifically for this purpose.

Non-governmental stakeholders agree that, overall, the strategy covers the relevant high-risk areas.

² Evaluarea «[implementării Strategiei Naționale Anticorupție pe anii 2011-2015](#) »

³ See, for example: [Ministerul Sanatatii All Republicii Moldova](#); [Agentia Proprietatii Publice](#); [Ministerul Agriculturii Si Industriei Alimentare](#); [Ministerul Afacerilor Interne](#); [Ministerul Educatiei Si Cercetarii](#); [Ministerului Finantelor](#); [Raportul privind implementarea planului sectorial de actiuni anticorupție pe domeniul vamal pentru anii 2018-2020](#)

Benchmark 1.1.3.

The policy addresses high-level corruption

The Strategy does not explicitly address high-level corruption, but given the fact that both the strategy and the action plan cover a number of issues (such as asset disclosure and monitoring of electoral campaign financing) that can be considered part of a policy designed to address high-level of corruption, as well as the institutions where high-level corruption can occur (including the Parliament, the Government, the judiciary, the local government and political parties), it can be considered that the benchmark is met.

Box 1.1. Consultation with stakeholders during the development of the strategy

In late 2016, the government launched the process of consultation with key stakeholders for the drafting of the 2017-2020 National Integrity and Anti-Corruption Strategy (NIAS). Once the first draft of the strategy was ready, discussions were held on each of the proposed pillars of the NIAS in which both public institutions and CSOs took part. The EU Advisory Mission on Public Policy for the Republic of Moldova also took part in these meetings. Following the submission by the stakeholders of their initial feedback, further meetings took place with the CSOs, the EU Advisory Mission, and the media. Overall, 14 public events were held during the consultation process.

The stakeholders submitted over 1,000 comments and proposals during the consultation process and 92 percent of these were taken into consideration and reflected in the strategy. The authorities also prepared and published a document detailing these comments and proposals and offering explanations for those that were rejected.

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

Assessment of compliance

Benchmark 1.2.1.

Draft policy documents are published online

Drafting of the current strategy began in November 2016 and key stakeholders, including the relevant public institutions, nongovernmental organizations, and development partners were invited to take part. The relevant drafts were published online. Given the involvement of nongovernmental stakeholders in the process, it is likely that they were aware of the online publication of the documents. The process involved the organization of 14 consultation events and, according to the government, 92% of the comments received were taken on board. It is not clear whether the authorities also made efforts to inform the broader public about the process.

Benchmark 1.2.2.

Public consultations are held with adequate time for feedback

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 receiving feedback from the public. 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.

Benchmark 1.2.3.

Before the adoption of policy documents, government provides a public explanation on the comments that have not been included

According to the government, 92 percent of the comments/proposals were reflected in the draft and public explanations were offered for the ones that were not included. Two documents detailing the comments received as well as the reasons for accepting or rejecting them were published on the NAC website.⁴

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

Benchmark 1.3.1.

At least 90% of measures planned for the reporting period were fully implemented according to the government reports

At least 80% = 6 points

At least 60% = 3 points

According to the government, as of 2020, 52% of the planned activities were fully implemented, 39% were partially implemented, and 7% were not implemented, while 2% of the actions were deemed impossible to be properly assessed. According to TI Moldova, multiple important activities were not implemented, including those concerning whistleblower protection, anti-corruption authorities and law enforcement bodies, and establishment of specialized anti-corruption courts.

⁴ Centrul National Anticoruptie “[Proiecte elaborate](#)”

Benchmark 1.3.2.

There is a wide perception among the main stakeholders that policy documents are properly implemented

According to a non-governmental stakeholder (IDIS), there is a “wide perception” that the implementation tends to be formalistic, with more attention being devoted to improvements in legislation than to enforcement and prosecution. According to another non-governmental stakeholder (TI Moldova), during the implementation period (2017-2020), the authorities adopted multiple policy and legislative initiatives (outside the scope of the strategy) that contradicted the goals of the strategy, therefore casting doubts over their commitment to implement it effectively.

Benchmark 1.3.3.

The policy has its estimated budget

The Action Plan itself does not include budget figures for individual activities. Instead, it indicates the source from which each activity is to be financed. International development partners have provided funding for the implementation of the strategy in addition to the funds allocated in the state budget.

The Government has provided a document titled “Estimated costs for 130 actions included in the Action Plan of NIAS 2017-2020”, which includes implementation costs broken down by calendar years as well as by source and availability of funds. This document is marked as “Annex 1 to information note” but no information was provided as to the origin, date, legal nature, or public character of the document.

This could explain certain confusion among the non-governmental stakeholders over the subject: According to some of them, the strategy has no budget, while, according to TI others, it does.

Benchmark 1.3.4.

No anti-corruption measure has been left unimplemented due to the lack of funds

According to the government, some of the activities from the action plan were not implemented due to the lack of funds, including the purchase of polygraphs and the creation of an e-learning platform. The annual monitoring reports also mention lack of funding as a reason for insufficient implementation of measures⁵.

⁵ See for example the 2020 Monitoring Report, page 71 (“insufficient financial resources for the development of local networks to draft and implement AC policies”), page 102 (“other institutions underlined the need for substantial financial coverage and the lack of national trainers in this field”) and page 104 (“the CSM budget does not foresee financial resources to procure a polygraph machine and to set up the room where polygraph testing could take place”).

Indicator 1.4. Coordination and support to implementation is ensured

Background

A dedicated 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, 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 assigned to dedicated staff (secretariat) with necessary powers and resources at the central level and carried out in practice

The Secretariat's resources appear to be limited: It has a staff of only two people, one of whom is on long-term leave. Although this staff works full-time on coordination and monitoring and has no other tasks, the number of employees is likely to be insufficient, given the scope of the work. Interlocutors interviewed during the on-site visit suggested that proper fulfilment of the full range of Secretariat's powers would require a team of at least three persons.

The Secretariat shares part of the monitoring tasks with three monitoring groups, made up of implementing agencies and CSO representatives: the first group is responsible for NIAS pillars I and IV (Parliament and political parties), the second group for pillars II and VII (Government, central and local administration and private sector), and the third group for pillars III, V and VI (justice and independent authorities). Although these groups are supposed to meet twice a year to monitor the implementation of action plans, which would lead to a total of 24 meetings, only seven such meetings seem to have been convened, which raises questions as to the efficiency of the monitoring mechanism as a whole.

It should also be noted that there is no legal act establishing the powers of the Secretariat (beyond the provisions in the Strategy concerning its functions).

Benchmark 1.4.2.

Focal points in implementing agencies ensure coordination and reporting to the central coordination body/unit

According to the government, the relevant agencies have focal points who have received training on monitoring and reporting. A non-governmental stakeholder (TI Moldova) has confirmed that the focal points have generally performed their duties in terms of coordination and reporting. However, according to TI Moldova, there have been problems in terms of cooperation from the Parliament and the Justice system institutions.

There is no uniform procedure for the designation and training of focal points, which leads to a discretionary practice where heads of institutions appoint or remove employees to/from this task and decide whether focal points should receive specialized training. In turn, this leads to the incapacity of the Secretariat to have updated knowledge of the status of focal points in all the 86 institutions that are required to report regularly on the NIAS implementation progress. Moreover, the 86 reporting institutions are formally under no legal obligation to appoint permanent focal points for the interactions with the Secretariat.

According to the Secretariat, this lack of a formal requirement has created some problems in practice, although the situation has improved since the introduction of electronic reporting by the implementing agencies as they have had to designate the focal points in order to gain access to the system. Some 35 focal points are currently reporting via the electronic system, although there are still institutions that have no access to it due to technical issues or because they are reluctant to report electronically. According to the Secretariat, approximately 60% of the reporting institutions submitted their most recent reports on time, while 30% submitted them with minor delays, and only 10% -- with significant delays.

Benchmark 1.4.3.

Implementing agencies receive methodological guidance and practical advice to support policy implementation

According to the government, the relevant agencies have focal points who have received training on monitoring and reporting. The Secretariat has conducted 15 training sessions for the focal points of all relevant institutions (both at the central and the local level), while also implementing mentoring programs which involve provision of methodological support for the implementing agencies. The most recent training session took place in late 2019. Two or three individuals were trained from each institution to avoid disruptions resulting from possible staff changes within the institutions. The training curriculum covers aspects such as strategic AC planning, monitoring and reporting procedures, practical monitoring tools.

According to the Secretariat, the focal points can ask for advice and guidance via phone, email, or a formal letter. The Secretariat believes that it would be beneficial to have designated integrity officers in public institutions who would also report on the implementation of the action plan.

Indicator 1.5. Regular monitoring and evaluation is ensured

Assessment of compliance

Benchmark 1.5.1.

Regular monitoring reports based on outcome indicators are published online

The Secretariat has prepared semi-annual and annual reports since the adoption of the strategy in 2017. The reports have been published online and can be freely accessed. The Strategy contains outcome indicators for each of the seven integrity “pillars”, while the Action Plan provides progress indicators for the activities included. Although the monitoring reports are only available in Romanian, the monitoring team

was able to assess that they include sections which measure progress toward the outcomes set out in the strategy, as well the implementation of the activities from the action plan.

According to the Secretariat, CSO studies are used as alternative sources of information and the reports by the implementing public institutions are checked against these, where available. There were 11 CSO reports in 2019 and 14 CSO reports in 2020 that were used in the monitoring process.

Benchmark 1.5.2.

Evaluation reports based on impact indicators are published online

The Strategy contains impact indicators for each of the seven integrity “pillars.” No evaluation report for the entire 2017-2020 policy cycle has been produced yet, although the annual reports for 2017, 2018, 2019 and 2020 (which are only available in Romanian and could not therefore be analysed in detail) contain sections which measure progress based on the Strategy’s impact indicators based on a public opinion survey.

Moldova presented to the monitoring team two such surveys, commissioned by the UNDP in 2017 and 2019 respectively. The surveys are very detailed and cover the general population, as well as specific groups, such as civil servants and business entities.

Benchmark 1.5.3.

Reports include information about budget spent

Information about the budget spent is not included in the reports.

Benchmark 1.5.4.

CSOs and other stakeholders are routinely included in the monitoring of the implementation of anti-corruption policy

CSO representatives have been appointed to each of the three Monitoring Groups tasked with monitoring the implementation of the Strategy. According to the government, CSO representatives have regularly attended the meetings. The government has also launched a small grants program for the CSOs involved in monitoring the Strategy’s implementation. CSOs have confirmed that they have been invited to participate in the monitoring, although TI Moldova has noted that the division of the monitoring process into three groups has made the task difficult for the CSOs whose limited resources do not always allow them to be involved in parallel groups.

Benchmark 1.5.5.

Independent evaluations of policy implementation are used by the government in its assessments

The government launched a small grants program to encourage preparation of alternative reports on the implementation of the NIAS and the sectoral action plans. Consequently, six CSOs prepared a total of 12 alternative reports over the three-year period. The findings of these reports were discussed during the meetings of the NIAS monitoring groups and were used to verify the information provided by the relevant public institutions.

Benchmark 1.5.6.

IT tools are used to gather and analyse data for monitoring and evaluation

According to the government, the relevant agencies report on the implementation of Action Plan via a designated electronic platform. They have received training on how to use the platform. The use of the platform is not mandatory and some institutions continue to submit paper-based reports.

2 Conflict of Interest

Moldova's legislation requires the country's public officials and civil servants to report conflicts of interests and establishes procedures for their resolution, although the procedures for managing potential conflicts of interest are not sufficiently clear, while apparent conflicts of interest are not regulated at all. The relevant legislation applies to all relevant public officials but there are no special regulations for MPs, members of the government and of local and regional councils. The National Integrity Authority (NIA), which is the main institution responsible for the enforcement of the conflict of interest rules, is currently understaffed. The authorities have been responsive to public allegations of conflict of interests and, overall, have a solid track record of responding to violations. There are, however, significant gaps in terms of addressing violations concerning gifts and post-employment rules, while it is not clear to what extent criminal penalties are applied in the most serious cases. The NIA publishes important information (including statistics) on enforcement but some types of important data is not available.

Indicator 2.1. Legal and institutional framework on conflict of interests 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 law assigns roles and responsibilities for preventing and managing conflict of interests (COI) including the duty to report, duty to abstain from decision-making and duty to resolve COI

According to the Law on Declaration of Assets and Persons Interests (Articles 11-15), the persons who have the duty to disclose their assets and interests are also required to report their COIs. The law contains a clear assignment of roles and responsibilities in terms of the prevention of real⁶ COI. In the event of a

⁶ See Benchmark 2.1.3 for distinctions between different types of COI.

real COI, the person in question is required to inform their immediate superior official or body about the COI within three days of establishing its existence, and to refrain from participating in the relevant administrative procedures until the COI is resolved. 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 law assigns the responsibility for managing real COIs to the person who has reported a real COI, the head of the relevant public institution, and the NIA (in the cases of high-ranking public officials).

Taking a generally positive view of the regulations on real COI that had been put in place, the monitoring team notes the need to clarify the procedure of resolving the real COI of employees of public institutions involving the NIA.

A literal reading of Article 14 of Part 5 of the Law on Declaration of Assets and Persons Interests indicates that, in such cases, the NIA is directly authorized (unless otherwise provided by special laws) to:

- restrict the access of the person with a COI to certain information or participation in the examination of situations related to his/her personal interest;
- transfer the person in question to another position, based on their written agreement;
- reassign the duties and responsibilities of the subject of the declaration, when it is considered that a certain real conflict of interest will continue to exist.

Since these measures are part of the labor relations within the relevant public organization and may be realized only by internal orders, it seems that, formally, the NIA has no powers to issue the relevant orders.

Provisions on the roles and responsibilities in preventing and managing potential COI are not sufficiently detailed and cover only limited situations related to the interests disclosed in the Declaration of Assets and Personal Interests. According to the Law, potential conflicts of interest are to be declared routinely via the asset declarations and the immediate supervisors of the persons in question must provide guidance on how to prevent these potential COIs from leading to real COIs. Additionally, any public agent subject to the declaration of assets and personal interests is obliged to inform in writing the head of the public entity in which he/she works or the National Integrity Authority about all job offers he/she intends to accept within three days of receiving them, if these jobs can generate a conflict of interest. The law, meanwhile, does not contain any special guidelines for potential COI resolution or any reference to a general procedure. The monitoring team therefore notes that in case of potential COI the scope for direct actions of immediate supervisor is uncertain.

As an additional safeguard against COI, Article 31¹ of the Law on Integrity authorises heads of public entities to request the NIA to provide integrity certificates for persons participating in competitions for public sector jobs. Such certificates are to include information about all violations by the person in question of integrity rules, including those concerning COI.

Benchmark 2.1.2.

The law provides for procedures for COI management, including a range of methods for COI resolution

A real COI is to be resolved within three days of being reported through one of the following options:

- restricting the access of the person with a COI to certain information or to participation in the examination of situations related to his/her personal interest;
- transferring the person in question to another position, based on their written agreement;
- reassigning the duties and responsibilities of the subject of the declaration, when it is considered that a certain real conflict of interest will continue to exist.

The law does not appear to include a number of other possible ways of resolving a real COI, such as divestment or liquidation of the asset-related interest, resignation of the public official from the conflicting private-capacity position or function, performance of duties under an external supervision, and/or resignation/dismissal of the public official from their public office.

If the head of the relevant public institution cannot resolve a real COI, they must refer the case to the NIA. The NIA is also responsible for resolving the real COI cases involving high-level officials with no immediate superiors. In such cases, the NIA can issue (a) a recommendation to delegate to a third party the responsibility for issuing/adopting the administrative document, for concluding the legal document, for participating in taking a decision or for taking the decision, or (b) a recommendation to accept the issuing/adoption of the administrative document, conclusion of the legal document, participation in taking a decision or the taking of the decision. Again, the range of options for resolving a real COI is quite limited.

The law does not stipulate any particular methods for the resolution of a potential COI. According to Moldova, some cases of potential COI can be resolved through the rules concerning incompatibility which provide for the possibility of resignation/ dismissal from the private domain, the possibility of changing the status of administrator in a status of the founder and vice versa, the transfer in fiduciary administration of the owned business, etc.

Benchmark 2.1.3.

The definition of COI covers actual, apparent and potential COI and includes a broad definition of private interests

The law covers both actual (“real”) and potential COI but not apparent COI. It also refers to “manifest” COI (the term “manifest COI” describes a situation where the person with a COI has taken action in breach of the COI regulations. The resulting legal acts are considered null and void, unless it would harm public interest or the act in question is a regulatory or judicial decision).

The law establishes a sufficiently broad definition of private (“personal”) interests: “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 entities, regardless of the property type, from his/her relations or affiliations with non-commercial organisations or international organisations, as well as those resulting from the person's preferences or commitments.” However, this definition does not cover private interests based on friendship.

According to Moldova, integrity inspectors may not carry out operational activities (in the field) to establish other relationships that result in personal interests, interests based on suspicions or denunciations that cannot be proven in terms of the legislation in force. Thus, all the aspects invoked in the Report on the subjective side of the non-material interest are, indeed, not regulated by the law and cannot be applied under the conditions of the current legislation.

Benchmark 2.1.4.

There are special COI regulations targeting judges, prosecutors, MPs, members of government, members of local, regional councils

The provision in the Law on Declaration of Assets and Special Interests concerning COI among high-level officials cited in Benchmark 2.1.2 applies to MPs, judges, prosecutors, members of the government, and members of local councils.

However, according to this benchmark different regulations are necessary for specific categories to reflect their special status and functions. After reviewing the various laws, the monitoring team concluded that special COI regulations are only in place for judges and prosecutors.

The Law on Status of Judges (Art. 8)⁷ as well as the Law on Prosecution Service (Art. 14,15)⁸ include several additional incompatibility requirements and restrictions that relate to COI prevention. There are also provisions on recusal of judges in the procedural codes and on recusal of prosecutors in the Criminal Procedure Code (Art. 54).

There are no special COI regulations for Parliament and Government members.

There is only one special provision for Members of the local councils (including the Autonomous Territorial Unit of Gagauzia) namely Article 21 of the Law on Local Public Administration,⁹ which restricts the right to vote on an issue with respect to which COI has arisen.

According to Moldova, the special legislation of NIA (at the moment of reference) does not imply instruments for individualizing the responsibility and sanctioning the violations of the legal regime of COI. All subjects of declaring assets and personal interests established by the Article 3 of Law no. 133/2016 on the declaration of assets and personal interests are equal before the law.

Benchmark 2.1.5.

The functions of policy development, oversight of the implementation of COI regulations, including the application of sanctions, methodological guidance and individual counselling are assigned to a dedicated agency or unit(s) with the sufficient number of specialized staff and powers to perform their mandate and are applied in practice

All of the above functions are assigned to the NIA. In terms of enforcement, according to the Law on National Integrity Authority, the institution is responsible for identifying cases of COI, settling them, applying sanctions, requiring other relevant bodies to take disciplinary measures over violation of COI rules,

⁷ Law on Status of Judges: [Art 8](#)

⁸ Law on Prosecution Service: [Art. 14,15](#)

⁹ Criminal Procedure Code: [Art. 54](#)

addressing the judiciary over annulment of administrative decisions and suspension of officeholders where COI has occurred. Furthermore, the NIA's functions under the law include conducting studies and analysis, developing a methodology for monitoring compliance, and providing methodological guidance, consultation, and training on COI. Nevertheless, according to experts, the NIA should be empowered to initiate changes in legislation through proposals to the parliament, government, or other relevant stakeholders. According to NIA, the agency has prepared and presented to the relevant stakeholders proposals designed to improve the regulatory framework in the field of integrity, to strengthen and streamline the institutional activity, organizational structure and other issues related to the continuity of the process of online submission of declarations of assets and personal interests.

There appear to be problems in terms of human resources since, according to the government, 27 of the 46 positions of integrity inspectors at the NIA were vacant at the time of assessment. According to TI Moldova, overall, the NIA only had 42 of the 76 employees that it was supposed to have in early 2021.

According to Moldova, the NIA is systematically initiating and promoting proposals to improve the regulatory framework in the field of integrity, according to legal competences. In this regard, since 2019, development partners and interested parties in the integrity sector have been submitting to the Ministry of Justice proposals to amend and adjust the integrity legislation, to strengthen and streamline the institutional activity, organizational structure and other issues related to the continuity of the process of online submission of declarations of assets and personal interests. All this data is public and can be accessed and verified upon request.

Benchmark 2.1.6.

Individual counselling and sanctioning functions are separated among institutions or within one institution

The functions are separated, according to both the government and TI Moldova. The Integrity Inspectorate is responsible for sanctioning, while the Evaluation, Prevention, and Policy Department conducts counselling.

Indicator 2.2. Unbiased and vigorous enforcement of regulations is ensured

Assessment of compliance

Benchmark 2.2.1.

All public allegations of violation of conflict of interests or other restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions) by high-level officials were investigated and grounded decisions were made public

According to the government, the NIA “verified all the statements made public regarding the possible violations of the COI regime that appeared in the media space” and that the findings of such reviews are available through the NIA website. Non-governmental stakeholders have expressed doubts about this.

However, no specific cases where the NIA did not respond to public allegations of COI were brought to the monitoring team's attention.

Benchmark 2.2.2.

Dissuasive and proportionate sanctions for violations of COI rules or other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions) are routinely applied in practice

Moldova's Code of Administrative Offences (Article 313²) establishes penalties for the violation of COI rules: fines ranging between 45 and 240 "conventional units" and suspension for a period of three months to one year. Under the Criminal Code (Article 326¹), violation of COI rules for personal benefit exceeding 10,000 "conventional units" can result in a fine of 10,000-15,000 "conventional units" or a prison sentence of up to three years, as well as prohibition to hold public office from five to seven years. The same violation committed by a person holding "important state office" or involving management of public funds can result in a fine of 15,000-20,000 "conventional units" or a prison sentence of two to six years, as well as prohibition to hold public office for five to 10 years.

The sanctions are proportional insofar as the law provides for a range of penalties that can be applied according to the severity of the offence. They can also be considered dissuasive, given the possibility of a prison sentence and disqualification from public office.

However, insufficient information has been provided to the monitoring team to demonstrate that these sanctions are enforced effectively in practice. According to the government, 110 acts on sanctions for the violation of COI rules were issued in 2020. However, no breakdown of this figure by the type of and no information regarding the kinds and sizes of criminal sanctions imposed by courts has been provided.

According to the hierarchy of normative acts in the legislation and jurisprudence of the Republic of Moldova, the legislation governing the legal regimes provided by the NIA consists of special laws, which implies its application properly. The legislator has expressly established certain special penalties in case of incompatibility, restrictions, etc. without leaving discretionary rights to the ascertaining agent (integrity inspector). Additionally, according to the Administrative Code, the exercise of the discretionary right does not allow carrying out an arbitrary administrative activity.

Benchmark 2.2.3. – 2.2.10.

BENCHMARK	Moldova 2020	
	Total	Percentage (%)
2.2.3. Track record of the implemented individual recommendations/instructions issued by the central body regarding COI resolution	96	100
BENCHMARK	Total	Per 1 million of population
2.2.4. Track record of sanctions imposed on high-level officials for violations of COI rules or other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions)	14	5,4
2.2.5. Track record of sanctions imposed for failure to report or resolve COI	11	4,2
2.2.6. Track record of sanctions imposed for violation of post-employment restrictions including terminated employment contracts	0	0
2.2.7. Track record of sanctions imposed for violation of incompatibilities	10	3,8
2.2.8. Track record of sanctions imposed for violation of the rules on gifts and hospitality, including confiscated illegal gifts	0	0
2.2.9. Track record of imposed ban on holding public office for serious or repeat violations of COI rules and other anti-corruption restrictions	45	17,3
2.2.10. Track record of invalidated decisions/contracts as a result of COI	11	4,2

Indicator 2.3. Information on COI is published

Assessment of compliance

Benchmark 2.3.1.

Information about the resolution of the reported COI in specific cases is regularly published online

According to the government, information on COI cases and their resolution is published on the NIA website both as individual news stories and as weekly summaries of cases. According to TI Moldova, the NIA usually reports about identified cases of COI but less often on their resolution.

Benchmark 2.3.2.

Information about gifts reported by officials in specific cases is regularly published online

According to the government, the NIA is not responsible for the publication of information on specific cases concerning gifts reported by public officials. According to TI Moldova, individual agencies are responsible for publishing gift registers but only some of them do this practice and they tend to focus on minor gifts, while more significant gifts received by high-ranking officials are often not reported.

Benchmark 2.3.3.

Detailed enforcement statistics on violations of COI rules and other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions) is regularly published online

Some statistical information on the enforcement of COI rules is provided NIA's annual reports. The reports provide figures disaggregated by the type of violation and the categories of officials who committed them. However, the information on sanctions is more limited. The cases are broken down by the relevant legal provision that was violated but there is no breakdown by the type of sanction applied. Neither do the reports include detailed information on criminal sanctions imposed for violations of COI rules or information about the enforcement of rules concerning gifts and employment contracts invalidated due to violation of post-employment rules.

3 Asset and Interest Disclosure

Moldova's legislation extends the requirement to disclose assets and interests to all high-risk positions. While the scope of disclosure is quite broad, it does not cover some important types of information, such as expenditures, virtual assets, beneficial ownership of assets, and ownership of trusts. The disclosures cover immediate family members but could potentially leave out some members of the same household.

Information on assets and interests is provided in a single form which is filed and published through an online electronic platform, although the publication excludes some important information about physical assets. The data is not published in a machine-readable format and the platform does not have a built-in system of "red flags."

The National Integrity Authority reviews a large number of asset declarations every year, although only a minority of these undergo thorough verification. The agency is currently understaffed, which could have a negative impact on the quality of verifications.

Moldova has a solid track record of sanctioning officials for non-submission and late submission of asset declarations, as well as for conflicts of interest detected through the verification of asset declarations, while a significant number of cases have also been forwarded to the law-enforcement authorities for further investigation of potential crimes. However, no statistics are available concerning the number of verifications that have resulted in sanctions for illicit enrichment and provision of false information in the asset declarations, or the number of cases where the verifications triggered by citizen or media reports have led to sanctions.

Indicator 3.1. Asset and interest disclosure applies to high corruption risk positions

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 3.1.1.**

At least the following officials are required to declare their assets and interests: the President, members of Parliament, members of Government and their deputies, heads of executive authorities and their deputies, the staff of private offices of political officials (such as advisors), regional governors, mayors, any other public officials defined as PEPs under the national law

The positions to which the requirement to disclose assets and interests applies are listed in the Law on Declaration of Assets and Personal Interests and the annex to the Law on the Status of Persons Holding Important Public Offices. According to these laws, the officials listed above are required to disclose their assets and interests.

Benchmark 3.1.2.

At least the following high corruption risk positions are required to declare their assets and interests: judges, prosecutors, members of the judicial and prosecutorial governance bodies, anti-corruption investigators, officials responsible for public procurement, members or board members of independent regulators and supervisory authorities, and top executives of SOEs

According to the provisions of the Law on Declaration of Assets and Personal Interests (Art. 2 Para.9 Art.3) and the annex to the Law on the Status of Persons Holding Important Public Offices, all high corruption risk positions are required to declare their assets and interests. The list of declarants includes judges, prosecutors, members of the judicial and prosecutorial governance bodies, anti-corruption investigators, officials responsible for public procurement, or any other civil servants including those with special status and members or board members of independent regulators and supervisory authorities, and top executives of SOEs.

Indicator 3.2. Asset and interest disclosure is comprehensive and regular**Assessment of compliance****Benchmark 3.2.1.**

Scope of disclosure is broad and allows detection of conflict of interests and illicit enrichment (unjustified variations of wealth) covering at least: moveable and immovable assets in the country and abroad, vehicles, income including its source, gifts, corporate shares, securities, bank accounts, cash inside and outside of financial institutions, financial liabilities including private loans, outside employment, paid or unpaid activity

The relevant provision in the Law on Declaration of Assets and Personal Interests (Article 4) as well as declaration form (Annex 1 to the Law) covers all items of this benchmark, except unpaid activity.

According to the abovementioned part of this benchmark, any employment, permanent or temporary, professional or **other activity, paid or not paid**, carried out by the declarant outside the main public office, with the details on the employer, should be covered by the declaration form in order to allow detection of both conflict of interests and illicit enrichment. The monitoring team has carefully studied the provisions of the Law including declaration form and concluded that it does not fully cover this benchmark requirement. In particular, the declaration does not apply to all employment in paid or unpaid positions. For example, this may concern the case of performing unpaid work in a non-governmental organization by a declarant who is not a member of such an organization.

The requirement of the Moldovan law extends to assets and interests abroad. Certain types of assets (e.g. bonds, works of art), as well as gifts, are excluded from this requirement if their value is below the established threshold which ranges from 10 to 20 “average national salaries” (approximately 400-800 EUR). However, this approach corresponds to the concept of “significant discrepancy” (is equal to 20 “average national salaries”), defined in the Law on Declaration of Assets and Personal Interests. At the same time, according to the government, monetary gifts have to be declared regardless of their size as well as movable or immovable property received as a gift via a contract.

According to Moldova, the subjects of the declaration are obliged to declare any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by the family members or by a concubine, both in the country and abroad, according to the Law no. 133/2016 On the Declaration of Assets and Personal Interests. Consequently, it applies in all types and cases of variations of paid or unpaid work. The monitoring team, however, cannot confirm that this is, indeed, the case.

According to Moldova, the NIA is not responsible for the legal regime of illicit enrichment. This field is attributed to the criminal prosecution bodies, while the responsibilities of the NIA lie in the administrative and civil fields. Consequently, in case of unjustified wealth, the NIA could proceed to civil confiscation.

Benchmark 3.2.2.

Scope of the disclosure includes information on beneficial ownership of companies domestically and abroad (at least in case of politically exposed persons)

Both the government and nongovernmental stakeholders have confirmed that the scope of disclosure covers information on beneficial ownership of companies. Legislation includes clear definitions of “beneficial owner” which conforms to the minimum level set in international standards and this benchmark. According to the Law on Declaration of Assets and Personal Interests (Article 2) a “beneficial owner” means - an individual who ultimately controls another individual or legal entity or owns or controls a legal entity or a beneficial owner of an investment company or an administrator of an investment company, or the person on behalf of whom a transaction or activity is carried out and/or who has, directly or indirectly, ownership or control over at least 25 per cent of the shares or voting rights of the legal entity or property held in trust management. The same definition is used in the Anti-Money Laundering Law of Moldova. The term “beneficial ownership” also appears in Article 4, Paragraph 1, Point h of the Law on Declaration of Assets and Personal Interests and in the form of declaration (refers to the ownership of shares in companies including beneficial ownership).

Benchmark 3.2.3.

Scope of the disclosure includes information on indirect control (beneficial ownership) of assets (at least in case of politically exposed persons)

According to the requirements of this benchmark, the definition of a beneficial ownership should cover legal entities and other assets. As noted in the previous comments for benchmark 3.2.2, the Moldovan legislation contains a clear definition of the beneficial owner concerning a legal entity. Despite the technical differences, the same term is used in the provisions of Article 4 Points b, d, f, g, h, l of the Law, as well as in the form of a declaration in relation to a number of other assets. In general, such an approach could meet the benchmark requirement, provided that the Law is properly applied. However, according to the government, in most cases declarants indicate only the assets of which they themselves or their relatives are the legal owners. Thus, it does not cover other cases of “beneficial ownership”.

In this context, the experts consider there is a need to further refine the terminology used in the Law as well as to change the practice accordingly.

Benchmark 3.2.4.

Scope of the disclosure includes expenditures

The law does not currently require disclosure of expenditures. According to Moldova, proposed legislative amendments which are being considered by the parliament would make disclosure of expenditures mandatory.

Benchmark 3.2.5.

Scope of the disclosure includes trusts to which declarant or a family member has any relation

The definition of “beneficial owner” (Article 2, 4) introduced in the Law on Declaration of Assets and Personal Interests covers only trust agreements concerning **trust management of property**. In this regard, the monitoring team notes that the law does not cover **trust ownership** issues. In addition, the declaration form does not provide specific details about trusts.

According to Moldova, over the three-year period since the introduction of the notion of effective beneficiary, the subjects of the declaration have not clearly understood the meaning of this notion and have confused things in the process of completing the declaration. The introduction of the notion of trust will require from the subjects of declaration even a higher level of knowledge than in the case of the notion of beneficial owner. Meanwhile, those who are involved in such legal arrangements and know in full the particularities of trusts could continue to deliberately hide their affiliations with them through non-disclosure.

Benchmark 3.2.6.

Scope of the disclosure includes virtual assets (e.g. cryptocurrencies)

There is no explicit requirement to disclose virtual assets. The Law on Declaration of Assets and Personal Interests (Article 4, Paragraph 1, Point D) contains a reference to “other financial assets” but it does not cover virtual currencies explicitly.

However, while the issue of cryptocurrencies is currently not mandatory, some declarants have expressed their willingness to declare them and the NIA has advised them to include cryptocurrencies under financial assets.

Benchmark 3.2.7.

Asset and interest disclosure covers information on family members, at least spouse and persons living in the same household

According to the benchmark the definition of the family members should cover, as a minimum, spouse of the declarant (person in formal marriage with the declarant regardless including cases when de facto separated) and persons living in the same household with the declarant. Therefore, children, parents, other relatives of the declarant should be covered by the definition of family members if they live in the same household as the declarant.

The national law does require disclosure of information concerning family members and civil partners. The definition of a family member includes a spouse, a minor child, and a dependant. However, the law does not cover other possible members of the same household highlighted in the benchmark.

According to Moldova, the legislator has clearly established the spectrum of persons to be included in the content of the electronic declaration of assets and personal interests. Thus, the declaration will include the income and wealth of family members - spouse, concubine, minor child, including the adoptive child or the dependent of the subject of the declaration. Thus, third parties (or other relatives than those established by the legislator) who live with the subject of the declaration are not included. In situations where many subjects of the declaration live in a rented home with third parties (such as relatives), requiring those persons (third parties, relatives) to communicate the income and property to a non-member of family would, at the very least, be excessive, if not unconstitutional.

Benchmark 3.2.8.

Assets and interests are disclosed in one form

According to the annex to the Law on Declaration of Assets and Personal Interests, assets and interests are disclosed in a single form.

Benchmark 3.2.9.

Declarations are submitted before or upon entering the office, annually while in office, before or immediately upon leaving the office and at least one year later after the termination of employment

According to the Law on Declaration of Assets and Personal Interests (Article 6), declarations are to be submitted within 30 days of assuming a position, annually, and within 30 days of leaving a position. There is, however, no requirement for any subsequent post-employment disclosure.

According to Moldova, each time and in all cases when the employment relationship was terminated, and the subject of the declaration was appointed / employed in a position of subject of the declaration of assets and personal interests (Article 3 of Law no. 133/2016 On the Declaration of Assets and Personal Interests), he/she is obliged to submit the declaration according to Article 6, Paragraph (2) of Law no. 133/2016. Only if the subject of the declaration is promoted or appointed to a position within the same organization, he/she is not required to submit a new declaration as this is not a post-employment case.

Indicator 3.3. An electronic system is in place and publication of information from declarations is ensured

Assessment of compliance

Benchmark 3.3.1.

Declarations are filed through an online platform

The declarations are filed through an online platform that the NIA operates.

Benchmark 3.3.2.

Information from asset declarations is public by default and access is restricted only to narrowly defined information to the extent necessary to protect privacy and personal security

The information from the asset declarations is public by default as the declarations are published online and anyone can access them. The exception is the asset declarations of “information and security officers and investigation officers” from a number of law enforcement and security agencies which are not published.

The law (Article 9) lists the types of information from the asset declarations that are excluded from publication. While some of the exclusions are reasonable and legitimate (e.g. personal ID numbers, phone numbers, addresses), a number of exceptions appear unjustified, including the information about the cash, precious metals or stones, and works of art which the officials in question possess. According to the Government replies, access to such information was limited in order to ensure the safety of assets of declarants. In the Government's view, this information can potentially be used by criminals to encroach on

the property of the declarants. Nevertheless, the monitoring team is disinclined to accept such approach, since:

- information on the place of residence of the declarant is not public, which means that potential criminal does not have data on the possible location of assets;
- it contradicts the goal of making the declarations public and unreasonably restricts access to socially important information about the assets of officials.

Benchmark 3.3.3.

Declarations are available online in a machine-readable (open data) format and are searchable

The declarations are not currently published in a machine-readable open data format. They are published as PDFs, which, according to Moldova, can be downloaded and searched.

Benchmark 3.3.4.

Functionalities of the electronic system include automated risk-based ('red flag') analysis of declarations

The system currently does not include the functionality of automated risk-based analysis, although the NIA is currently working to implement it in the future.

Benchmark 3.3.5.

Functionalities of the electronic system include automated cross-checks with government databases, including at least registers of companies, civil acts, land titles, vehicles and tax database

No such automated cross-checks are done currently. The NIA is seeking funding to improve the system, including the creation of a function that will allow cross-checking of data from declarations with other government registries and databases, including the State Register of Population, the State Register of Law Units, the information system of the State Fiscal Service, the Real Estate Register, the State Register of Transport, the integrated information system of the General Inspectorate of the Border Police, and other automated information systems, considered necessary for the implementation and development of the e-Integrity system.

According to Moldova, AIS (Automated Information Systems) e-Integrity can perform automated cross-checks and the content / format of the electronic declaration of assets and personal interests in relation to the floating format of data in the state registers (which changes annually) creates critical errors, and the problem cannot be solved unilaterally, which implies the need to create a standardized interoperability government platform in which all data provided by public institutions will be calibrated (machine readable format) and adjusted to a single format.

Indicator 3.4. Unbiased and effective risk-based verification of asset and interest declarations is ensured with a follow-up

Assessment of compliance

Benchmark 3.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency or unit which has a sufficient number of specialised staff and powers to perform its mandate

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. Under the same law (Article 17), the responsibility to carry out this work within the NIA is assigned to integrity inspectors. Verification of the declarations is the primary duty of the integrity inspectors, although they also appear to be responsible for reviewing and resolving conflicts of interest beyond those identified via the verification (Article 19, Point E). The powers of the integrity inspectors (Article 20), include (a) requesting information and explanations from the inspected persons; (b) requesting from other natural persons and legal entities the information necessary for conducting checks on assets and personal interests, for checking compliance with the legal system on conflicts of interest, incompatibilities and restrictions; (c) free online access to the State registers of organisations, no matter of the property right and legal form of the organisation, in the performance of their duties involving the verification of assets and personal interests.

The NIA currently has insufficient staff numbers to perform the above task effectively. According to the NIA, only 24 of the 46 integrity officer's positions were filled at the time of assessment. Also, the responsibilities of the integrity officers are not limited to the verification of asset declarations: They also have to review potential violations of COI rules, for example. The NIA's budget was reduced by a third for 2021, so it can only hire five new inspectors this year. According to NIA, its lack of access to foreign sources of information (due to a lack of the relevant bilateral and multilateral agreements) is also a problem as far as verification is concerned.

According to both the NIA and TI Moldova, the agency's powers in terms of the verification of declarations could be affected negatively by the proposed amendments to the legislation, including a reduction of the time allocated for verification.

Benchmark 3.4.2.

The following declarations are routinely verified:

- Declarations of persons holding high-risk positions or functions;
- Based on external complaints and notifications (including citizens and media reports);
- Ex officio based on irregularities detected through various, including open, sources.

Selection of declarations for verification is regulated by Articles 27-28 of the Law on National Integrity and a "methodology" (which has not been made available to the monitoring team). According to the law, verification is conducted either "automatically" or based on a notification submitted by a natural person or a legal entity. Automatic verification is triggered by the submission of a declaration after the legal deadline

or a failure to submit one, as well as the failure to provide all the required information in a declaration. The law also authorizes the NIA to conduct verification based on “public information.”

It should be noted that there are two types of verifications in Moldova: control of declarations and control of property. The former is a mere 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 more 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. No declarations are selected for this type of in-depth verification automatically.

According to the law, at least 40% of annual verifications have to involve the declarations of high-level public officials. In this regard, the Government informed the monitoring team that, over the last two years, the selection procedure for that 40% of declarants was based on the list of high-level public officials indicated in the orders, issued by the Head of the National Integrity Agency (NIA). The Government has informed the monitoring team that, that based on a GRECO recommendation, such orders should always include a number of MPs, judges, and prosecutors. However, it appears that these are selected for “control of declarations” and not in-depth verification which is the more relevant type of verification for this benchmark. According to Moldova, legislative amendments currently under consideration in the parliament would introduce in-depth verification in the latter type of cases.

Benchmark 3.4.3.

Risk-based (red-flag) analysis is used to choose declarations for verification

Based on the government’s answers to the questionnaire, no comprehensive risk-based analysis appears to be applied. The automatic selection of the declarations submitted after the legal deadline seems to be the only such mechanism currently in place. The NIA is working to introduce risk-based analysis in the future.

According to Moldova, the legislator expressly established these legal provisions and respectively, there was no normative pillar to give an extensive interpretation in the internal acts / control procedure. At the moment, there is an initiative within NIA in order to finalize and implement the risk-based analysis – verification based on a system of red flags.

Benchmark 3.4.4.

Anonymous complaints that include verifiable information trigger the verification

Anonymous complaints cannot trigger complaints since, according to Moldovan law (Article 76 of the Administrative Code); public authorities are not to review anonymous petitions. According to Moldova, legislative amendments currently under consideration in the parliament would introduce the possibility of anonymous complaints triggering verification.

Benchmark 3.4.5.

Verification is prioritised to ensure a reasonable number of verifications considering available resources

According to the government, there is no established system for prioritizing verification and the inspectors in charge of verification make the relevant decisions on ad hoc basis.

Benchmark 3.4.6.

There is a wide perception among the main stakeholders that verification is unbiased and free from political or any other undue interference

According to some nongovernmental stakeholders, the NIA has previously ignored some of reports by the media and CSOs regarding possible violation of disclosure regulations by officials affiliated with the ruling party. However, no specific instances of this kind from the assessment period of 2020 were brought to the monitoring team's attention.

Benchmark 3.4.7.

BENCHMARK	Moldova 2020	
	Total	Per 1 million of population
3.4.7. Track record of sanctions imposed public officials for violations of COI rules in public procurement	32	12,3

Indicator 3.5. Dissuasive and proportionate sanctions are enforced

Assessment of compliance

Benchmark 3.5.1.

Dissuasive and proportionate sanctions for violating asset and interest disclosure rules are routinely applied in practice

For the purpose of this benchmark, the following sanctions for violating asset and interest disclosure rules are considered: sanctions for non-submission, sanctions for late submission of the declaration and sanctions for false statement in the declaration. All of these sanctions should be dissuasive and proportionate and routinely applied in practice.

In this regard, the monitoring team notes that sanctions are in place for late submission and non-submission of the declarations, as well as provision of false information in a declaration. The former two are administrative offences under Article 330² of the Contravention Code and can result in a fine of 30-60 or 60-90 “conventional units” (for late submission and non-submission respectively). Additionally, under Article 27, Part 8 of the Law on National Integrity Authority, a repeated failure to file an asset declaration within 30 days of a request by an integrity inspector is to result in the dismissal of the person in question.

Provision of false information is a criminal offence under Article 352¹ of the Criminal Code and can result in a fine of up to 600 “conventional units,” a prison sentence of up to five years, and a prohibition of holding a particular office or engaging in particular activities for a period of up to five years.

However, no information has been provided regarding the kinds and sizes of criminal sanctions imposed by courts.

As for the administrative sanctions, according to the NIA annual report, integrity inspectors drew up protocols on violations under Article 330² of the Contravention Code in 210 cases in 2020 and fines worth a total of 456,500 lei (EUR 92,654 as of 03.05.2021) were imposed.

However, the total amount of fines also includes those imposed for other violations, such as failure to resolve a conflict of interest and no information has been provided regarding the total number of cases in which sanctions were imposed.

Benchmark 3.5.2. – 3.5.7.

BENCHMARK	Moldova 2020	
	Total	Per 1 million of population
3.5.2. Track record of sanctions imposed for non-submission or late submission of declarations	176	67,7
3.5.3. Track record of sanctions (measures) imposed for conflict of interests (including for violation of rules on incompatibilities, gifts, divestment of corporate rights, post-employment restrictions) based on the detection through verification of declarations	17	6,5
3.5.4. Track record of sanctions (measures) imposed for illicit enrichment (unjustified assets) based on the detection through verification of declarations	0	0
3.5.5. Track record of administrative sanctions for false or incomplete information in declarations imposed on high level officials	0	0
3.5.6. Track record of criminal sanctions for false or incomplete information in declarations imposed on high-level officials	0	0
3.5.7. Track record of sanctions following verification of declarations based on media or citizen reports	0	0

Note: Regarding the benchmarks 3.5.4., 3.5.5., 3.5.6., Moldova has stated that the evidence is journalized and available at the institutions authorized with sanctioning.

Benchmark 3.5.8.

Detailed statistics on the verification of declarations and applied sanctions is regularly published online

The NIA annual report for 2020 (which is available online) contains statistical information regarding the total number of declarations of verified during the year (including a breakdown by the types of officials covered). A breakdown of the violations discovered during verification (by the types of officials and the types of violations) is also included. However, no similar breakdown is provided as far as sanctions are concerned.

Also, it appears that the annual report does not clearly separate the data concerning the findings of verification of asset declarations from the data concerning other procedures (e.g. ad hoc conflict of interest reviews) and the violations found through those.

According to Moldova, the mentioned statistics are not expressly regulated by the legislation in force. Civil society organizations have all the legal instruments, including legislation on access to information, to request such data.

4 Protection of Whistleblowers

Moldova's legal framework extends to most potential whistleblowers from both the public and the private sectors and provides for the possibility of reporting through different channels. Public institutions are required to establish internal reporting mechanisms. The law prohibits retaliation against whistleblowers and contains safeguards against the disclosure of their identity, although some of the relevant provisions are not sufficiently clear and leave room for interpretation that would harm whistleblowers. A number of important protection measures, such as consultation, state legal aid, compensation, and medical and psychological aid are also missing from the law. Anonymous whistleblower reports are not allowed.

The National Anti-corruption Centre and the People's Advocate (ombudsman) are the designated central bodies responsible for receiving whistleblower reports and providing whistleblower protection respectively. However, they do not have sufficient numbers of dedicated staff working on these issues, while the People's Advocate also lacks appropriate legal powers. Consequently, overall public trust in the system appears to be low, as demonstrated by the small number of registered whistleblower reports.

There is no authority responsible for the collection and analysis of data on whistleblowing and whistleblower protection, so no comprehensive statistics are available either.

Indicator 4.1. The whistleblower protection is guaranteed in law

Background

Whistleblower protection in Moldova is regulated by the Law on Informers on Integrity (whistleblower law), which establishes 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, as well as by the Regulation on the procedures for the examination and internal reporting of disclosures of illegal practices, approved through a government decision.

Assessment of compliance

Benchmark 4.1.1.

The law guarantees protection of individuals who reported about a corruption-related wrongdoing that they believed true at the time of reporting and who disclose this information using internal or external channels

The Law extends protection to the individuals who reported an "unlawful practice," including "manifestations of corruption" (Article 3). Disclosures can be made through the internal channels (via employers), externally (via the National Anti-corruption Centre), or publicly (Articles 9-11).

The legal definition of a whistleblowing report (literally called “integrity warning”), as set in Article 3 of the law, contains two conditions that are at odds with the requirements of this benchmark: (a) the report must be done “in good faith” (which is presumed according to Article 6), and (b) the reported wrongdoing must “threaten or damage the public interest”.

According to Moldova, these two principles were included in the law in order to ensure compliance with rulings of the European Court of Human Rights and also with the Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014. Thus, according to Moldova, in the case of *Guja v. Moldova* no. 14277/04 (2008) the European Court of Human Rights set out six principles on which it has relied in determining whether an interference with Article 10 (freedom of expression) of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the actions of a whistleblower who makes disclosures in the public interest was ‘necessary in a democratic society’. Given that the principles of ‘good faith’ and of ‘the public interest’ are among these 6 conditions set out by the European Court, the Republic of Moldova introduced the above-mentioned provisions in the national law.

According to the law, a whistleblower report is considered to have been made “in good faith” so long as the information provided by the whistleblower turns out to be true or the whistleblower had “reasonable grounds to believe” that it was true and that public interests were threatened (Article 6). According to Moldova, there are no established criteria for determining whether public interest is at stake in each case, so the relevant entities (employers or the NAC) make decisions on ad hoc basis.

Benchmark 4.1.2.

The whistleblower legislation extends to both the public and the private sector employees

Article 3 of the law defines an “employer” as a “public or private entity” thereby extending the provisions of the law to the private sector as well. However, the notion of “employee” does not cover persons with a self-employed status, shareholders and board members as well as potential employees (in the sense of persons undergoing a recruitment process), though it does include volunteers and trainees, persons whose employment has ended, as well as contractors.

According to Moldovan authorities, they are in favour in expanding the coverage of the law to include additional categories.

Benchmark 4.1.3.

The law puts on the employer the burden of proof that any measures that were taken against a whistleblower were not connected to his or her report

The law (Article 18) states that the employer bears the burden of proof that measures taken against an employee are not connected to a whistleblowing report or the employee’s “involvement in any capacity in a whistleblower report.” Otherwise, such measures are considered “revenge.”

Benchmark 4.1.4.

The law provides for the following key whistleblower protection measures:

- protection of whistleblower's identity;
- protection of personal safety;
- release from liability linked with the report;
- protection from all forms of retaliation at the workplace.

According to the law (Article 7), a whistleblower's identity is not to be made public and is not to be disclosed to the targets of a whistleblowing report, unless the whistleblower decides to disclose their own identity. During the on-site visit the authorities could not explain the rationale behind the limiting of disclosure obligation to the target of the report, a solution which seems to go against the very principle this legal text is supposed to protect. According to the government, the whistleblower's identity is not to be disclosed to other individuals either, although the provision in the law is not sufficiently clear on this. A whistleblower's personal information can only be disclosed if a whistleblowing report leads to the commencement of criminal prosecution that is a subject of "public interest," in which case the whistleblower is to be interviewed as a witness.

A whistleblower can demand protection under Chapter IV of the law. Protection is to be provided either by the employer or by the People's Advocate (in the case of an external disclosure). Employers are required to ensure protection of whistleblower from revenge at workplace and the definition of revenge (in Article 3) is sufficiently broad to cover all forms of retaliation. The 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.

The protection of a whistleblower's personal safety is only provided if the disclosure results in criminal prosecution and the whistleblower acquires the status of a witness.

Benchmark 4.1.5.

The law provides for the additional pre-retaliation protection measures:

- consultation on protection;
- provisional protection;
- state legal aid.

The law does not expressly guarantee consultation on protection, provisional protection, or access to state legal aid. According to the government, whistleblowers are to be informed about the protection when filing their reports. However, the law appears to contain no clear provisions on this procedure.

Benchmark 4.1.6.

The law provides for the following post-retaliation remedies:

- appropriate compensation;
- reinstatement;
- medical and psychological aid.

According to the law (Article 14), a whistleblower is to receive compensation for “material and moral damage resulting from retaliation.” The law contains no express provisions concerning reinstatement or medical and psychological aid. According to the government, these remedies will be provided if a whistleblower serves as a witness in a criminal case, although no references to legal acts establishing such guarantees have been made available to the monitoring team.

According to the ombudsman’s office, individuals dismissed from work can challenge dismissals in court and the ombudsman can provide an opinion in such proceedings, although judges tend to ignore the whistleblower protection law and base their rulings on labour law alone.

Indicator 4.2. Effective mechanisms are in place to ensure that whistleblower protection is applied in practice

Assessment of compliance

Benchmark 4.2.1.

All three types of channels for reporting are available, including: protection of whistleblower’s identity;

- internal at the workplace (at least in the public sector);
- external (to specialized, regulatory, law enforcement or other relevant state body);
- possibility of public disclosure (to media, public associations).

As noted in benchmark 4.4.1., the law provides for the possibility of reporting internally (via the employer), externally (via the National Anti-Corruption Centre), and publicly. However, according to Article 9 Paragraph 3, the reporting system is hierarchical, since the whistleblower may use the external or the public channels only if certain alternative 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).¹⁰ According to Moldovan authorities, in practice, whistleblowers have never been precluded from making external disclosures bypassing internal channels

¹⁰ According to the English translation of the provision provided by Moldova, “the employee may omit the procedures of internal disclosure of the illegal practice, making an external or public disclosure, when: a) considers that the employer could be involved in the disclosed illegal practices; b) considers that there is a risk of non-confidentiality of his data; c) considers that there is a risk of loss, disappearance or destruction of evidence; d) the employer did not ensure the registration of the disclosure of the illegal practices

or sanctioned for it, although a civil society representative has suggested that the current wording of the law could discourage potential whistleblowers from making direct external or public disclosures. The law (Article 10) expressly requires the National Anti-Corruption Centre (NAC) to establish and operate a reporting channel. The NAC does not have separate reporting channels for whistleblowers and the relevant disclosures have to be made via the general reporting mechanism.

According to TI Moldova, the government has not yet conducted a study to assess the operation of internal reporting channels in practice.

According to the ombudsman's office, the level of awareness of the reporting channels is generally low, even among civil servants, and whistleblowers tend to opt for public disclosures in practice.

Moldova stated that, according to the national law, employees may omit the procedures for internal disclosure of an illegal practice, making an external disclosure directly, when they deem it necessary, because the situations provided in Article 9 Paragraph (3) of Law no.122/2018, do not represent conditions that the whistleblower should meet in order to omit the internal procedure. By using the permissive verb 'may omit' the legislator leaves it to the intimate conviction of the whistleblower the possibility to decide whether he will first make an internal report, or directly an external report. Moreover, whistleblowers are not required to explain or justify why they chose external reporting directly. Thus, according to the Republic of Moldova, the Law no.122/2018 does not contain any provision that would make it mandatory to verify the personal reasons of the whistleblowers when choosing the reporting channel and consequently, the personal motives are not checked.

Benchmark 4.2.2.

Anonymous whistleblower reports are accepted and protection is granted to anonymous whistleblowers when they have been identified

The law does not allow for anonymous whistleblowing. Article 11 of the law expressly requires whistleblowers to identify themselves when they file a report.

According to Moldova, the EU Directive on the protection of persons who report breaches of Union law of 23 October 2019, which is a reference material for this benchmark, states that it should be possible for Member States to decide whether legal entities in the private and the public sectors and competent authorities are required to accept and follow up on anonymous reports of breaches which fall within the scope of this Directive.

Benchmark 4.2.3.

There is a dedicated authority responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers that has sufficient number of specialised staff and powers to perform its mandate

The National Anti-Corruption Centre and the People's Advocate (the ombudsman) are the primary authorities tasked with dealing with whistleblowing. The former is responsible for the receiving external disclosures and acting upon them, while the People's Advocate is to ensure the protection of

whistleblowers. However, the law does not detail the powers or the responsibilities of either body in terms of oversight, monitoring, and data collection.

According to the government, the relevant divisions of the National Anti-Corruption Centre and the People's Advocate currently have 46 (out of which only one employee deals with whistleblowing reports) and nine employees respectively. However, these employees of the two institutions have other responsibilities too and do not work on whistleblower issues alone. According to the government's answers, while the National Anti-Corruption Centre has sufficient resources to deal with this task, the funding allocated to the People's Advocate and the number of its staff members have not increased since it was assigned this additional role.

The People's Advocate has no legal power to directly activate any one of the protection measures set forth in Article 14 of the Whistleblowing Law. The institution may only issue recommendations or opinions in support of a whistleblower. Moreover, there is no legal ground for the People's Advocate to exercise a more general oversight as far as compliance with the Whistleblowing Law is concerned. According to the ombudsman's office, the institution's powers in terms of whistleblower protection are insufficient and the law needs to be clearer as to in which situations the ombudsman can intervene.

According to the government, there is currently no dedicated institution responsible for monitoring and data collection on whistleblower protection. The ombudsman's office only records complaints, while the NAC does not keep statistics on whistleblowing. Consequently, there is currently no framework to collect, centralize and analyse the data related to the enforcement of the Whistleblowing Law. Each institution involved in the process may (but is not required to) compile its own statistics.

Indicator 4.3. The public is aware of and has trust in existing protection mechanisms

Assessment of compliance

Benchmark 4.3.1.

There is a wide public perception among the main stakeholders that reporting channels are trustworthy and efficient.

Insufficient information has been provided to make assessment under this benchmark. According to TI Moldova, public trust in the reporting channels is not strong yet as they are relatively new. According to the government, no studies have been conducted yet to assess public perception regarding the reporting channels.

Benchmark 4.3.2.

Detailed statistics and other information on whistleblower reports and whistleblower protection is regularly collected, analysed and used as a basis for reform of anti-corruption policy, aggregated information is also published

No such statistics are currently collected or published.

Indicator 4.4. The whistleblower protection system is operational and protection is ensured in practice

Assessment of compliance

Benchmark 4.4.1. – 4.4.5.

BENCHMARK	Moldova 2020	
	Total	Per 1 million of population
4.4.1. Track record of whistleblower reports received by public authorities through internal channels	0	0
4.4.2. Track record of whistleblower reports that were received by the central authority	6	2.3
4.4.3. Track record of consultations to whistleblowers provided by the central authority	6	2.3
4.4.4. Track record of criminal cases for corruption offences that were started as a result of whistleblower reports	0	0
4.4.5. Track record of at least one of the protection measures from those listed under 4.1.4-4.1.6	3	1.1

Note: The population of Moldova was 2.6 million in 2020 (source: <https://data.worldbank.org/country/moldova>)

Benchmark 4.4.6.

Protection is provided to all whistleblowers that require such protection and fulfilled preconditions for granting a protection

Based on the information provided by the government and a non-governmental stakeholder (TI Moldova), too little empirical data is available to make assessment since there have only been handful cases of whistleblowing to date. TI Moldova is not aware of any cases where whistleblowers were denied protection. The ombudsman's office has confirmed that there have been no cases of a whistleblower being denied protection.

Benchmark 4.4.7.

All known cases of breaches of confidentiality of whistleblower identity were sanctioned

Neither the government nor nongovernmental stakeholders are aware of any relevant cases. According to the ombudsman's office, all whistleblower disclosures to date have been public, so there was no need for the protection of confidentiality.

5 Independence of judiciary

Moldova's judiciary has been undergoing considerable changes in the past 5 years, and the process of reform was ongoing as the report has been prepared. Key laws regulating judiciary have gone through major overhauls. In particular, the Law on status of the judge was amended several times in 2020, and the Law on Supreme Council of Magistracy (SCM) was last amended in December 2020 with changes for both laws coming into force in January 2021; the Law on judicial organisation was amended in March 2020; and the Law on disciplinary liability of judges was last amended in 2018. Various stakeholders are proposing more legislative changes and are pending in either the Parliament or being prepared for legislative submission.

Currently, judicial tenure is not sufficiently guaranteed in law and practice. Moldova preserved the system of initial appointment and the process for confirming judges in the office following this appointment is complex, involves various steps with room for discretionary judgement of the members of the SCM. Political bodies are still involved in the appointment process; this is of special concern in regards to the Judges of the Supreme Court of Justice (SCJ). While the SCM plays an important role in the selection and nomination of candidates for other judicial positions, the President of the Republic appears to enjoy some level of discretion in practice. Overall, the SCM has real responsibility for judicial appointments, evaluation of judicial performance, promotions, inspection and disciplinary matters. There are issues concerning its composition in terms of judge-members and non-judicial members. On the upside, the judge members are elected in line with international standards, while selection of lay candidates is not. The decisions of the SCM are publicly available, however, there is no wide perception that SCM is impartial and independent in parts due to selection processes of its members, in parts due to practice of their decisions and the lack of accessibility of the public to the reasons of the SCM decisions.

Judicial budget is relatively well secured and appears to have grown over the last five years. However, the filling of the vacancies for judicial positions has been halted, which needs to be looked into further as monitoring continues. While judicial salaries are of reasonable level compared to other professions with similar levels of responsibility, some stakeholders maintain it is not sufficient to reduce the risk of corruption. Remuneration levels of the court staff and judicial assistants are low enough to offer no incentives for staying in these positions.

The powers of the Court Presidents are limited in law. However, non-governmental stakeholders have expressed skepticism over this being the case in practice. Case distribution among judges is transparent and judicial decision are open to the public. The court presidents have no role in the disciplinary proceedings and judges have access to due process with final decisions made public. Some grounds for disciplinary liability were found to be vague and criminal liability for judicial decisions is possible under Moldovan Criminal Code. Overall application of disciplinary and dismissal procedures are not perceived impartial by non-governmental stakeholders and routine application of proportionate and dissuasive sanctions is lacking.

Indicator 5.1. Judicial tenure is guaranteed in law and practice

Background

According to Law 544/1995 on the status of the judge, Art. 11 (1), judges of the courts of first instance and judges of the courts of appeal are appointed by the President of the Republic of Moldova upon the proposal of Superior Council of Magistracy (SCM) from among the candidates selected by competition. Art. 6 of this law describes the conditions to be met by candidates, Art. 10 establishes that candidates are selected by the Board for selection and career of judges (Selection Board) according to this law, the law on the selection, performance appraisal and career of judges and SCM's Regulations; Art. 9 elaborates on how the competition is organised and mandates that only candidates from the Registry are admitted to the competition. Judges are initially appointed for a 5-year period and can afterwards apply for life tenure (until the age-limit of 65-years old) (Constitution of Moldova, Art. 116 (2)). The judges of the Supreme Court of Justice (SCJ) are appointed by the Parliament upon the proposal of the SCM (Constitution of Moldova, Art. 116 (4)).

Assessment of compliance

Benchmark 5.1.1. – 5.1.2.

5.1.1. Judges are appointed until the legal retirement age

5.1.2. If not, clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the law and used in practice

Moldova has in place the initial appointment of judges for a 5-year period. At the on-site visit, the SCM authorities opined that the probationary period should be abolished in favour of life tenure. This position is supported by the Decisions of the Plenum of the SCM on endorsement of the draft Constitution 378/25 of 2019, 439/33 and 403/19. However, on 22 September 2020, the Constitutional Court adopted an opinion indicating that the draft law abolishing the probationary period did not comply with constitutional requirements, and the reform has not moved forward in the Parliament.

The application for life tenure is submitted in written form by the interested judge. The application is examined by the Plenum of the SCM (Law on Superior Council of Magistracy, Arts. 4 and 19). In Moldova, criteria and procedure for confirming judges for life tenure after the initial 5-year period are not fully provided for in the primary law.

In particular, under Article 13 (3) of the Law on the status of judge, the acting judges are subject to extraordinary performance evaluation in case of appointment until age limit. Such evaluation is conducted by the Board for performance evaluation of judges (Evaluation Board) under this Law, the Law on the selection, performance appraisal and career of judges and the SCM' regulations. The procedure and criteria for assessing such performance are established by the Regulation on the criteria for selection, promotion and transfer of judges, adopted by the Decision of the Superior Council of Magistracy no. 613/29 from 20 December 2018. Indices, verification sources and the assignment of scores for evaluation in the context of lifetime appointment are further defined in the Annex 1 of this SCM Regulation. The scores are assigned for each criterion and their sum corresponds to the overall score.

Following evaluation procedure, the Evaluation Board takes a decision on passing of the evaluation by the judge with qualifiers "insufficient, good, very good and excellent", or on failure of performance

evaluation (Art 23). These qualifiers establish the largest percentage of the total score (up to 60 points out of total 80). Decisions of the Evaluation Board are issued in writing and must be motivated (Art 22 (4 and 5)). The evaluated judge can appeal these decisions to the SCM within 10 working days from the date of their adoption (Art. 24 – for Evaluation board). These decisions are transmitted to the SCM the day after the expiry of the decisions' contestation deadline. Board's decision must be published on the website of the SCM within 5 working days from the date of adoption. The scanned copy of the original decision is sent by electronic mail to the person who was subjected to evaluation the day after the adoption of decision. The list of candidates with their scores is published on the SCM website.

The SCM in order to make the proposal on life-term appointment examines the candidates. SCM member-rapporteur presents detailed information about the candidates in the Plenary session of the Council, including information regarding verification of the impeccable reputation of the judge and the scores of the candidates. Each member reviews the judge's indicators and votes based on his or her personal judgement. Under the law on Superior Council of Magistracy, Art. 24, the SCM adopts decisions by the majority votes of present members. In case of parity – the decision is in favour of the judge. The decisions not to propose the judge for confirmation have to be motivated. These decisions are final (Art. 25). The monitoring team notes that personal judgment is not a criteria and goes against the benchmark's requirements, and that all SCM decisions should be motivated and not only the decisions for not proposing the judge for confirmation of the life mandate.

In practice, the appointment until the retirement age is not treated as confirmation of the judge in the office by default. It is a complex procedure involving various steps with room for discretionary judgement of the members of the SCM. Moreover, according to non-government stakeholders the initial probation has been a tool for putting pressure on young judges by court presidents and the SCM, as evaluation of judges is based on mostly numbers and the monitoring team has been informed that several "non-obedient" or outspoken judges have not been appointed for life after 5 years. They further shared that SCM actual reasoning can be published in 30 days, but the assessment of applicant's capabilities is most often non-informative. If the President has not approved the proposed appointment for life, the SCM has mostly accepted such refusals and did not propose the applicant for the second time, which would have led to the appointment for life. The President's reasoning, though mandatory by law, has not been published.

Benchmark 5.1.3.

Judicial irremovability is ensured in practice and judges are not removed from office (including through ad hoc vetting or assessment) unless based on the law and objective grounds in exceptional cases

The judicial irremovability is enshrined in the law. In particular, Article 18 of the Law on the status of the judge prescribes judge's irremovability except for cases prescribed in Article 25, which provides a list of circumstances under which the judge can be dismissed. SCM submits proposals to remove the judge to the President or the Parliament. The procedure for removal and appeal of such decision are established by law.

There is no ad hoc vetting in Moldova. However, judges are subject to regular performance evaluation every 3 years. If s/he is granted the evaluation "insufficient", the judge shall be subject to extraordinary evaluation within the deadline set by Evaluation Board. Granting the evaluation "insufficient" in two consecutive extraordinary evaluations constitute a ground for the SCM to initiate the procedure for dismissing the judge.

In 2020, according to the information provided by Moldovan authorities, two judges have been dismissed as result of disciplinary proceedings. Some non-governmental stakeholders raised concerns that irremovability is not ensured in practice and that proposals to dismiss judges are made by SCM without proper justification and explanation to the judges concerned and the public. In addition, the monitoring team emphasizes that the notion of irremovability should not to be strictly linked to the disciplinary matters (dismissals) only, but as well to the removal of judges from a case or their re-assignment to other courts without their consent.

In addition, Activity report of the SCM and activity reports of the courts for 2019 mentions the increase of the number of resigned and or dismissed judges. In particular, it states that allocations for the chapter on social benefits were initially approved in the amount of 6,862.1 thousand lei, but had to be increased to 10,020.1 thousand lei based on the increased number of resigned judges. Furthermore, the same report states that “the amount of 1,841 thousand lei was redirected for the payment of unplanned dismissal allowances to resigned judges.”¹¹ The reasons and nature of such resignations and or dismissals should be further explored in the 5th round of IAP monitoring.

Indicator 5.2. Judicial appointment and promotion are based on merit, the involvement of political bodies is limited

Assessment of compliance

Benchmark 5.2.1.

An independent Judicial Council or a similar body plays a decisive role in the appointment and dismissal of judges, the discretion of political bodies (if involved) is limited by the decisions taken by the Judicial Council or a similar body

According to Law 544/1995 and Law on SCM, the President of the Republic is in charge of the appointment, promotion, transfer and removal of all judges, save the Supreme Court (SC) judges, as well as presidents and deputy presidents of courts, from among the candidates selected by competition, upon the proposal of the SCM. As it relates to SC judges, and in accordance with Article 116(4) of the Constitution, they are appointed by Parliament following a proposal submitted by the SCM. Similar provision exists in Law 789, Art. 9(1), according to which, its judges shall be appointed by the Parliament at the proposal of the SCM, within 30 days from the date of proposal’s registration in Parliament. The SCM has the authority to conduct the selection process and decide on final candidates in all cases, which is in line with the benchmark.

While the SCM plays an important role in the selection and nomination of candidates for these positions, there seems to be some level of discretion in making the final decision by the President of the Republic. Law 947/1996, Art.19 (4) and Law 544/1995, Art. 11 states that the President of the Republic or the Parliament can reject the proposed candidate and request the SCM to propose the same or another

¹¹ CSM „[Raport Cu Privire La Activitatea Consiliului Superior Al Magistraturii Si A Instantelor Judecatoresti In Anul 2019](#)”

candidate for the existent vacancy, albeit only under very limited circumstances including gross ethical violations or impediments. By the same token, Law 947/1996, Art. 20 states that the SCM must send the proposal for dismissal to the President of the Republic of Moldova or, if necessary, to Parliament.

The “decisive role” in the benchmark means that the judicial council or a similar body either makes the final decision on the appointment and dismissal of judges, or prepares a proposal for the relevant decision that is submitted to the political body which has to approve the proposal or reject only in exceptional cases on clear and justified grounds. If rejected, the judicial council or a similar body should be able to reconsider its proposal and, if confirmed again, the political body should approve the proposal. This is the case in Moldova for all judges with exception of those from the SCJ. The President has to provide reasoning for rejection and this decision can be overruled by the SCM, as described above. Unlike in case of appointment by the President, the Parliament is not required to provide grounds for its decisions. Separately from that, non-governmental stakeholders maintain that reasoning of the President on his decisions are not made public and are not being contested by SCM in practice.

In its 2018 Opinion, the Venice Commission underlined that “Elections by parliament are discretionary acts, therefore even if a judicial council makes the proposals; it cannot be excluded that an elected parliament will not limit itself from rejecting candidates. Consequently, political considerations may prevail over the objective criteria.”¹² This is of particular concern given recent interference by Parliament by conducting a no-confidence vote in three Judges of the Constitutional Court, as well as the failed attempt by the Parliament of Moldova to introduce the possibility to revoke Constitutional Judges for lack of trust ([Constitutional crisis in the Republic of Moldova – call for restraint and dialogue – parliament should repeal today’s decision](#)). The monitoring team believes that the competences of the Parliament in the election of the Supreme Court judges should be excluded and the procedure for these judges should follow the same procedure as to the judges from the lower instances.

Benchmark 5.2.2.

Judges are selected and promoted based on competitive procedures clearly set in the law and based on merit

The primary law regulates main issues of the selection and promotion of judges, including principles, main stages, requirements to candidates, grounds for refusal/rejection of candidates in Moldova. Only criteria for decision-making and technical procedural aspects are regulated in the secondary legislation adopted by the SCM. The benchmark requires, however, that the primary law also cover criteria.

All vacancies are published online and available to the general public and any eligible person can participate in the competitive selection or promotion. It appears that sufficient time is provided to apply as the process is conducted twice a year, making it predictable.

In particular, Article 9 (1) of the Law 544/1995 provides that the positions of judge, court deputy chair and chair shall be filled on a competitive basis. The average points of the candidates to be appointed for the

¹² Venice Commission, [Joint opinion of the Venice commission and the directorate general of human rights and rule of law \(DGI\) of the Council of Europe on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy](#), par. 26, March 2020.

first time in the position of judge is calculated according to Article 5 (2) of the Law 154/2012 on the selection, evaluation of performances and the career of judges. The average points of the candidates to be promoted to a higher court, appoint to the position of president or vice-president of a court or transfer to a court of the same level or to a lower court, is calculated according to Article 5 (3) of the same law. According to Article 9 (9) of the same law, the candidates for the position of judge, president and vice-president of the court choose their positions based on the results of the competition in the descending order of the competition score. The results of the contest are published on the official website of the Superior Council of Magistracy within 2 working days from its completion. According to the provisions of the Regulation on the organization and conduct of the competition for the filling of positions of judge, appointment to the position of president, vice-president of the court, the competition is organized and carried out based on:

- open competition - informing the society about the vacancies of judge, ensuring free and equal access to participate in the competition of the candidates who meet the conditions;
- competence and professional merit - selection of the most competent candidates based on clearly defined criteria and a single evaluation procedure;
- impartiality - non-discriminatory application of unique selection criteria;
- transparency - organizing and conducting an open contest;
- equality - ensuring the access to participate in the contest of any person who meets the requirements provided by Law no. 544-XIII of July 20, 1995 on the status of judge.

In Moldova, the Register of candidates is formed based on the results of the competition. Decisions to include candidates into the Register are made on a set of predetermined criteria of the candidates (experience, skills, integrity). However, non-governmental stakeholders do not believe these criteria adequately measure experience and skills of the judge, as they are mostly based on the number of cases reviewed by the judge, the number of over-ruled decisions in the appeal, etc.

This aside, the decisions on the winning candidates are made by the SCM based on personal preferences, and the possibility for the SCM to grant the candidate with score of up to 20 points out of total 80 without having clear rules and criteria on how the grade has been achieved violates the principle of fair and competitive appointment/ promotion process. Non-governmental stakeholders shared that even with the existing system; judges with the highest scores assigned in the Register often are not selected by the SCM. International observers report similar issues. A 2018 report by the ICJ stated that certain difficulties persist and it was informed of several cases in which the SCM has favoured candidates that had achieved only low scores by the Selection Board, in preference to those with higher scores for appointment to judicial positions (in particular with regard to promotion to higher instances). These “exceptions” did not appear to be motivated.¹³

Without a doubt, the standard of a merit system should be implemented not only on paper, but also in practice and constantly monitored. That means the assessment of the candidates should be based on objective and precise evaluation elements and components and accordingly, the rank list of the candidates created by the Selection Board should be followed by the SCM without any exceptions. The decisions of the SCM for approval of the candidates should be elaborated and published so that the public and the other candidates can access them, thus ensuring transparency and fairness of the whole procedure. Favouring of certain candidates can be avoided through introducing, for example, of a comprehensive system of initial training as a precondition for entering in the judiciary and compulsory appointment of the graduated candidates. This could be an option in a case of abolishing the probationary period and

¹³ The Undelivered Promise of an Independent Judiciary in Moldova «[Only an Empty Shell](#)»

introducing a system of Judicial Academies based on the models of France, Portugal, Spain, Albania, North Macedonia, etc. Further steps need to be taken to improve the performance appraisals with a priority given to qualitative over quantitative criteria.

As mentioned above, another issue is the election of members of the SCJ. SCJ judges are appointed by the Parliament following a proposal submitted by the SCM. The Parliament proceedings represent de facto a second evaluation following the one by SCM and do not allow a transparent and merit-based selection.

Benchmark 5.2.3.

Judicial vacancies, with the terms and conditions, and results of all stages of the judicial selection and promotion are announced online with the publication of relevant decisions and their justification

Judicial vacancies, including terms and conditions for participating in the selection or promotion, for all positions are published online. The SCM announces the launch of a process and the vacancies in the Official Gazette of the Republic of Moldova and on the SCM official website. The agenda of SCM meetings are published on the Council's website at least 3 days before the meeting.

Decisions adopted by the SCM on the conduct of competitions, as well as the decisions of the Board for the selection and career of judges, including those adopted in closed sessions, and separate opinions of members of the Council can be also accessed on the website of the SCM. Monitoring team looked at several decisions on the website and found that they include detailed information about the selection process and the candidates scoring up to the point of interview with the SCM. No information in regards to the findings and results of the interviews with SCM, including written reasoning for such decisions, was found.

According to Moldova, the files of candidates for the position of judge are not publicly accessible on the grounds that they contain personal data, but the list of candidates for the position of judge is published in the Register of participants of competitions for vacant positions of a judge, a president or a vice-president of a court. The meetings of the Council plenary are public (being broadcast live every Tuesday at 9:00 a.m.), unless the President or at least three Council members file a substantiated request to hold a closed meeting, or when a public debate on the issues included in the agenda could harm the privacy of individuals, the interests of the state or public order. Closed meetings shall be recorded through audio equipment and the recordings shall not be published.

The monitoring team believes that the files of the candidates can be published in line with the data protection regulation while keeping the anonymity of some of the data. The files are of great importance for the competitiveness and fairness of the whole procedure and for the public to know what is the profile (personal and professional background) of the candidates who have applied.

Indicator 5.3. Court presidents do not interfere with judicial independence

Assessment of compliance

Benchmark 5.3.1.

Court presidents are elected/appointed by the judges of the respective court or by the Judicial Council or similar judicial body based on merit and transparently

The benchmark aims to eliminate the appointment of the court presidents by political bodies. It further requires the selection of court chairpersons in a transparent manner, with vacancies for the post of court chairpersons published and all judges with the necessary seniority/experience being eligible to apply. An advisory judicial body should be entitled to make a recommendation, which the executive may only reject, by reasoned decision. The election/selection should be competitive and based on merit of the candidates.

According to Law 544/1995 on the Status of a Judge and Law 947/1996 on Superior Council of Magistracy, the President of the Republic is in charge of the appointment of the presidents and deputy presidents of courts from among the candidates selected by competition, upon the proposal of the SCM. The SCM has the authority to conduct the selection process and decide on final candidates, which is in line with the benchmark.

According to Moldovan authorities, the judges who are candidates for administrative positions must present a strategic program during their term of office. The monitoring of the fulfillment of the program during the mandate is performed by the Judges' Performance Evaluation Board. The SCM recommends to the presidents of courts to attend courses and seminars on management and settlement of old cases, budget, human resources, etc. The SCM Plenum in accordance with the Recommendation carries out the evaluation of the results of the interviews of the candidates for the position of president no. R (94) 12, according to which 'professional training, integrity, capacity and efficiency' are evaluated in candidates for positions of the court presidents.

As to the Supreme Court, the law reserves the power to appoint its Chairperson to the parliament, which is not in line with the benchmark.

Benchmark 5.3.2.

Court presidents do not influence the judicial remuneration or other benefits received by judges

TLaw 544/1995 sets the salary rates for judges of different levels on the status of a judge (Art. 28) and Law 355 XVI/2005 on the salary system in the public sector. The benchmark states that Court presidents must not have an influence on remuneration (bonuses and privileges). Moldova did not provide any relevant information on this issue, however, the Law 514-XIII/1995 on the organization of judiciary does not list such powers within the competence of the Presidents of the courts (Art. 16-1), and civil society organizations have agreed that this is clearly set by law and discretion is non-existent.

Indicator 5.4. Judicial budget and remuneration guarantee financial autonomy of the judiciary and judges

Background

The budget of the courts constitutes a component part of the state budget and is approved by the Parliament, on the proposal of the Superior Council of Magistracy.

Assessment of compliance

Benchmark 5.4.1.

The funding received by the judiciary is sufficient to ensure its autonomy

According to Art.121 (paragraph 1) of the Constitution, the financial resources of the courts are approved by the Parliament and are included in the state budget. The annual budget allocated to the judiciary is guaranteed by law. In particular, Art. 22 Law 514-XIII/1995 on the organization of the judiciary stipulates:

- The courts have their own budget, which is an integral part of the state budget.
- The budgets of the courts shall be elaborated and administered in accordance with the principles, rules and procedures provided by the Law 181/2014 on public finances and budgetary-fiscal responsibility.

The annual budget is approved annually in November-December for the following year. The courts, within the established time lines, submit reasoned proposals to the SCM regarding the budget requests for the following year. The needs of the courts are analysed by the SCM, which then makes the proposal to the Ministry of Finance. Within the limits of available financial resources, the Ministry either accepts or rejects the requests of the judiciary. In case the request goes beyond the available limits, but is substantiated, the Ministry will ask the Parliament for an additional budget.

There is no clear evidence that the actual judicial budget is insufficient to safeguard the autonomy of the judicial branch. Several civil society organisations agree that there is no issue of insufficient budget or resources for the judiciary. Some, however, raised issues of insufficient funds for IT equipment and for providing instant access to e-cases for parties, which goes somewhat beyond the scope of this benchmark. Judiciary representatives met at the on-site visit did not consider budgetary allocations to be a problem, especially if compared to other institutions in the country.

Activity Report of the Superior Council of Magistracy and the activity reports of the courts for 2019 analysed the dynamics of the court budget in 2015-2019, and concluded that there was a steady increase in allocations for the courts until 2017, as follows: in 2016 the allocations increased by about 10.6% compared to 2015, in 2017 - with about 8.6% compared to 2016. In 2018 and 2019 there was a regression of court allocations compared to 2017, motivated by the exclusion of capital investment expenditures. However, in 2019 the court allocations were increased again by about 4.7% compared to the allocations approved for 2018.

In particular, the Law 303/2018 on the State Budget for 2019 approved allocations for the courts in the amount of 398,392.1 thousand lei. The Law 112/2019 on amending the State Budget Law for 2019, reduced court allocations to staff costs by 2828.0 thousand lei, based on the savings formed during the year from vacancies. At the same time, the budgetary allocations to other expenditure items were increased by 3892.5

thousand lei. Thus, the specified budget of the courts for 2019 amounted to 393,394.7 thousand lei. The percentage of budget execution was about 98.7 percent, and 81.9 percent of the allocated budget went towards personnel-related expenses.

Separately, an issue for follow up in the 5th round of IAP monitoring is the unfilled vacancies in the judiciary. According to the Decision of the SCM Plenum 24/1 of January 15, 2019, the limit number of personnel units approved for the courts constitutes 2658 units, including 489 judge positions. At the same time, the Government Decision no. 1281 of December 26, 2018 established a temporary moratorium regarding the employment of staff in the vacancies registered on November 30, 2018, including in the courts - for 365 vacancies. For these reasons, when the state budget was rectified, the allocations of the courts were reduced to personnel expenses by 2828.0 thousand lei.

Benchmark 5.4.2.

The level of judicial remuneration is fixed in the law, is sufficient to ensure judicial independence and reduce the risk of corruption and excludes any discretionary payments

The benchmark requires that the primary law regulates the amount of remuneration received by judges of different levels, which is the case in Moldova. At the same time, the benchmark requires that primary law completely excluding discretionary payments (e.g. bonuses, allowances distributed through discretionary decision-making). This in Moldova is not in line with the benchmark.

In particular, Law 270/2018 on the unitary salary system in the budget sector establishes a unitary salary system in the budget sector and represents a general framework that includes the principles, rules and procedures for establishing salary rights in relation to the hierarchy of functions in the budget sector, including that for the judiciary. The provisions of Article 10 of this law establish the components of the monthly salary, which consist of the fixed part, composed of base salary; the monthly increase for the professional degree; the monthly increase for holding the scientific and/or scientific-didactic title; the monthly increase for holding the honorary title; and the variable part, which includes performance increase; and specific bonuses. In addition, there could be the increase in compensation for work performed in unfavorable/unfavourable conditions; bonuses for overtime, night work and / or work performed on non-working holidays and / or rest days; the increase for participation in financial development projects from external sources; unique prizes and annual awards.

The Activity Report of the Superior Council of Magistracy and the activity reports of the courts for 2019, in analysing the salary expenses by personnel categories in the reporting year, found that the average salary of a judge calculated per month was 21.9 thousand lei in courts, 26.6 thousand lei in courts of appeal and 32.6 thousand lei in the SCJ, of a civil servant 7.3 thousand lei per month and that of the technical and auxiliary service personnel on average 3.3 thousand lei per month.

The monitoring team did not have sufficient information to conclude whether the level of remuneration is enough to ensure judicial independence and reduce the risk of corrupt practices. Members of judiciary met at the on-site visit, believed that judicial salaries were comparable to other public sector professions of similar level of responsibility. They also cited receiving the increase in 2019 in accordance with the Law on the State Budget for 2019 (about 7.1%). However, still they thought the salaries were low if compared to judicial remuneration in other neighbouring countries. Civil society organizations provided various answers. On the one hand, some believe that remuneration is enough and that goes beyond similar positions within

the, for example, prosecution office. Others, Others mentioned that it is still low for the overall standard of the country. In any case, none addressed the issue of whether it is enough for independence.

Benchmark 5.4.3.

The level of remuneration of the court staff and judicial assistants is sufficient to reduce the risk of corruption

The Government did not provide specific information as regards to the remuneration of court staff. According to the Activity Report of the SCM and the activity reports of the courts for 2019, the average salary of the civil servants in the courts, which include the judicial assistants amounted to less than one third of the basic salary of the judge, and amounted to 7.3 thousand lei per month.

The civil society has stated that the level of remuneration of the court staff that assists judges is lower than for other regular staff. The representatives of the judiciary met at the on-site visit, expressed serious concerns over the low levels of remuneration for the court staff and in particular the judicial assistants. They mentioned that the staff turn-over/turnover is very high and it is difficult to keep good people in these positions. The only incentive for judicial assistants being that this can help them become judges one day. They did not comment in regards to the impact this may have on possible risk of corruption. Nevertheless, taking into account all of the above, the monitoring team doesn't/does not consider this benchmark met in Moldova.

Indicator 5.5. Status, composition, mandate and operation of the Judicial Council guarantee judicial independence and integrity

Background

The Superior Council of Magistracy (SCM) is the main governing body of the judiciary, with responsibility for judicial appointments, evaluation of judicial performance, promotions, inspection and disciplinary matters. The law provides that it is an independent body. There are six bodies affiliated to the SCM: a Qualification and Disciplinary Boards, which function within the SCM; the Selection Board and Evaluation Board, which are established in subordination to the SCM; as well as the Judicial Inspectorate and a recently established Ethics Commission.

The SCM reports to the General Assembly, which elects judges to the SCM and its specialized boards, approves and amends the Code of Ethics and decides on matters of court administration. The General Assembly is made up of all judges in Moldova, and meets once a year, its decisions are valid if a simple majority of judges takes part (Art. 23-1, 23-2, 23-3 and 24, Law 514-XIII/1995 on the organisation of the judiciary).

Assessment of compliance

Benchmark 5.5.1.

The Judicial Council or other similar bodies are set up and function based on the Constitution and law that define their powers and mode of operation.

The Constitution of Moldova, the Law 947/1996 on the Superior Council of Magistracy, and the Law 514-XIII/1995 on the organisation of the judiciary define the powers of the SCM and include main provisions on its operation (how meetings are held, decisions are made, rules of recusal and conflict of interest, transparency of work, publication of decisions, safeguards of fair proceedings, etc.). This is in line with the benchmark.

Benchmark 5.5.2.

The composition of the Judicial Council or other similar bodies includes not less than half of judges elected by their peers representing all levels of the judicial system.

Article 122 of the Constitution of the Republic of Moldova provides that the Superior Council of Magistracy (SCM) consists of judges and university lecturers elected for tenure of four years and that the President of the Supreme Court of Justice, the Minister of Justice and the Prosecutor general are ex officio members of the Superior Council. According to Article 123(2), the procedure of organisation and functioning of the Superior Council of Magistrates is laid down by organic law.

In particular, the Law 947/1996 on the SCM, with amendments which added three more members to the SCM, thereby increasing them from 12 to 15, provides that in addition to three ex officio members, five members shall be full law professors selected by the Parliament by majority votes of the deputies; and seven members are judges elected, by secret ballot by the General Assembly of Judges, representing all levels of courts.

When describing the composition and the procedure used for selection of the current SCM, the Moldovan authorities stated that the SCM consists of 15 members (with three added members by 2020 reform), and includes judges and professors of law, as well as the President of the Supreme Court of Justice, the Minister of Justice and the General Prosecutor who are full members (“ex-officio” members). They were selected in accordance with the Law 947/1996, Art. 3: five members of the SCM from among the law professors were appointed by the Parliament, with the vote of the majority of the elected deputies, based on the proposals of the Legal Commission on appointments and immunities of the Parliament and seven judge members (and seven substitutes) elected among judges by the General Assembly of Judges.

For the purposes of the assessment of this benchmark, the current composition of the SCM is assessed, and will be accordingly reassessed following the legislative once they come into force and are implemented in the course of the regular annual monitoring. In the way of background, constitutional amendments relating to the Supreme Council of Magistracy were being prepared. According to the information note submitted by the Government to the Venice Commission, the draft constitutional amendments prepared by the Ministry of Justice and submitted to the Government for consideration, provided, among other things,

for the removal of “ex-officio” members; the ratio of judges elected by their peers to non-judges would then be 7 (judges) to 5 (full-time law professors).

Currently less than half of composition of the SCM are judges elected by their peers representing all levels of the judicial system, which is not in line with the benchmark.

Benchmark 5.5.3.

Members representing the judiciary in the Judicial Council or other similar bodies are elected through a general vote of all judges.

SCM Judges by the General Assembly of Judges (GAJ) of Moldova elect seven judge members (and seven substitutes). For the vote to be valid, more than half of the judges should be present and cast their votes. According to the information provided by Moldovan authorities after the on-site visit in 2019 there were 444 judges in the office and 322 judges were present at the General Assembly of Judges in 2019 when SCM members were selected.

On a separate note, the monitoring team is concerned in relation to the fact that the GAJ is deliberative if a simple majority of the incumbent judges participates. This opens a space for concerns on the independence of the GAJ and in the full support of its decisions by the corpus of judges. For example, at the GAJ in 2019 there were 322 judges out of total number of judges 444, which means that one third of the judges was not represented in its decisions already. Furthermore, concerns remain in relation to the independence of the GAJ (the procedure for election of the managing organs of the GAJ, the procedure for development and approval of the Rules of Procedure). These concerns could be reduced by amending the rules towards introducing that the decisions are adopted with two third majority of judges participating at the Assembly, and attendance of two thirds out of the whole number of the judges. These issues should be followed up on in the 5th round of IAP monitoring.

Benchmark 5.5.4.

The composition of the Judicial Council or other similar bodies includes a substantial number of non-judicial members who represent the civil society or other stakeholders that have public trust (e.g. academia, law professors, human rights defenders, NGO representatives), have an appropriate legal qualification and are selected through a transparent procedure based on merit

The country would be compliant with the benchmark if more than 1/3 of the Council's composition (for example, 6 or more non-judicial members out of 15) are non-judicial members, provided that the non-judicial part of the council is substantial enough to influence the decision-making of the council (e.g. votes of at least several lay members should be required to make a decision). Otherwise, the membership of non-judicial members would be a formality and not provide the balance between judges and lay members as promoted by recommendations of international organisations.

In Moldova, currently in accordance with Article 3 of the Law 947/1996 on the SCM five out of 15 SCM members are non-judicial (lay) members, which is exactly 1/3 but not more.

Furthermore, the benchmark requires that non-judicial (lay) members of the Judicial Council should be selected through a transparent procedure (preferably through an open competition) based on merit of candidates who should be required to have appropriate legal qualification. The requirement to have public trust and integrity is applicable to all non-judicial members who represent either civil society or other stakeholders.

In Moldova, Law 947/1996, Art. 3 (3) provides that five lay members of the SCM are appointed by the Parliament from among the law professors, with the vote of the majority of the elected deputies, based on the proposals of the Legal Commission on appointments and immunities of the Parliament. The Legal Commission on appointments and immunities should organize a public contest before the expiry of the term of office of the appointed members or within 30 days of the date of the vacancy. The public contest includes at least the examination of the files and the hearing of the candidates. The Legal Commission on appointments and immunities draws up reasoned opinions for each selected candidate and submits the proposals to the Parliament for appointment.

The law limits the scope of candidates to being law professors. Human rights defenders nor NGO representatives can access the SCM. No explanation was given as to why this is the case.

Civil society organisations have questioned the transparency of the process and stated that while the members were selected through a transparent procedure, with pre-announced criteria, but with no motivation (grades) or provided marks. Having a full discretion on putting marks thus damaged the concept of the merit-based and transparent procedures. In a way of illustrative example, they further shared that on 5 February 2020, Parliament announced a competition for four SCM lay member positions and approved the corresponding regulations, subsequently 18 candidates applied. On 11 March 2020, LRCM and IPRE requested suspending the competition and proposed an independent shortlisting mechanism in line with the January 2020 recommendation of the Venice Commission. This request was ignored by the Parliament. On 17 March 2020, four professors were appointed as SCM members with the vote of 55 MPs from the ruling majority. The professors were not present at the Parliament's sitting, contrary to the established practice. In June 2020, the Venice Commission criticized the election of the professor members of the SCM, stating that the selection had been politically influenced. It recommended that their mandate be terminated with the amendment of the Constitution in 2021. No steps have been taken to improve the selection process, including a proposal by the Venice Commission of vesting outside bodies, not under government control, such as the Bar or the law faculties, with the possibility to propose candidates or establishing an independent, non-political commission to fulfil this task.

The monitoring team concludes that there are no clear criteria for the selection and election procedure for the non-judicial members, nor the procedure in front of the Parliament is transparent. Diversity of the composition of the SCM should be ensured through selection of candidates from the wider society, lawyers, NGOs, candidates proposed by the opposition parties in the Parliament, with an interviewing process, open to the public and the media, thus reducing the risks for selection of the politically exposed and affiliated with the political parties' candidates.

Benchmark 5.5.5.

The Judicial Council or other similar bodies are responsible for all questions of the judicial career (including selection, promotion, transfer, evaluation) and discipline

The SCM is responsible for all questions of the judicial career (including selection, promotion, transfer, evaluation) and discipline. According to civil society organisations, the SCM also decides on who is attending training or seminars and grants leave for court presidents and vice presidents.

Benchmark 5.5.6.

There is a wide perception among the main stakeholders that the Judicial Council or other similar bodies operate independently and impartially without political or other undue interference in their work

According to the survey on perception of judges, prosecutors and lawyers on justice reform and fight against corruption, conducted between October and December 2020 by the Legal Resources Centre from Moldova (LRCM), when asked about the SCM activity, 60% of judges considered that it was transparent, and only 46% of judges considered that SCM's decisions were well reasoned; furthermore, only 30% of judges consider that the SCM ensures the independence of judges. To compare, in 2015, 71% of judges considered that the SCM was transparent, and 68% of judges considered that the SCM's decisions were well reasoned and clear.¹⁴

There is no widespread perception among non-governmental stakeholders in Moldova that the judicial governance bodies are genuinely independent and impartial. On the contrary, the civil society organisations have stated that due to the circumstances related to the composition of the SCM (see point 5.4) and the appointment procedure of SCM members among judges, the independence and impartiality of SCM is questionable. Furthermore, they stated that there is a lack of independence of the Judicial Inspection. Judicial Inspectors have no support staff and all their activities are done solely by them, and it lacks financial autonomy.

The atmosphere of real and perceived biased and political motivation of the SCM and the corporatism in the judiciary needs to be addressed and in the view of the monitoring team could be amended through development of proactive communication of the SCM with the public and the media (PR officers, establishing a communication unit, regular press conferences), so that the public could understand how SCM exercises its functions independently and protects the independence of judges. SCM is also welcome to conduct annual regular surveys on the image of the judiciary in close cooperation with the civil society. The SCM as the central self-governing body is invited to introduce sectoral anti-corruption integrity policies and to develop corruption risk management in all the vulnerable decision points. This may help improve the perception and the rating in the future. Some civil society organisations expressed similar views in regards to the need for SCM be more proactive in public relations

¹⁴ Survey "Perception of judges, prosecutors and lawyers on justice reform and fight against corruption" December 2020, [Legal Resources Centre from Moldova \(LRCM\)](#)

Benchmark 5.5.7.

Proceedings and decisions of the Judicial Council or other similar bodies, including their justification, are transparent for the public scrutiny

Provisions on transparency of the SCM seem reasonable. Art. 81 of the Law on the SCM establishes the transparency of the activity of the SCM. The meetings of the SCM are public, except in cases where, at the reasoned request of the president or at least three of its members, it is decided that the meetings shall be closed in order to protect information that is a state secret or, in case of special circumstances when the public nature may harm the interests of justice or may harm the privacy of individuals. The reasoned decision on declaring the meeting closed shall be taken by a majority of the present members. The agendas of SCM meetings, the draft decisions and additional materials are regularly provided in the Council's website at least three days before the meeting. The SCM meetings are recorded using video and audio means and are recorded in the minutes, which are placed on the web page of the Council.

The regulations approved by SCM and the announcements regarding the launch of the contest to fill the vacancies of judge are published in the Official Gazette and on the SCM official website. Decisions adopted by SCM, specialized bodies, including those adopted in closed sessions, separate opinions of members of the Council, as well as annual reports of the Council are published on the SCM official. The SCM decisions by which it expresses its agreement or disagreement for initiating the criminal investigation under the conditions of Art. 19 § (4) of Law no. 544/1995 regarding the status of judge are published on the SCM official website, with the anonymization of the data regarding the judge's identity. The elaboration of the normative acts of SCM is carried out in compliance with the legislation on transparency in the decision-making process.

Civil society however expressed views that even though the meetings can be followed online, well-reasoned decisions are not provided regularly and reasoning for the decisions is often published not at the same time as the decision itself, limiting transparency and appropriate access to information

Benchmark 5.5.8.

Members of the Judicial Council or other similar bodies comply with the conflict of interest rules in their work

Moldovan authorities did not provide Rules on conflict of interest and its management for members of the SCM, nor other information in regards to the practice of application of COI rules to the SCM members. The Law on SCM does not contain any provisions requiring compliance with the conflict of interest rules by the members of SCM, save a general article on recusal and self-recusal. The Ethics Commission consisting of five members, selected exclusively from SCM judge members was created in May 2018. The Commission's main priority is to issue, on request or ex officio, opinions and recommendations for judges with regard to the dilemmas concerning the interpretation and application of the Code of Ethics and Professional Conduct for Judges. No information was provided of any results or decision taken by this body.

The civil society has stated that the Ethics Commission adopted rules on conflict of interest. However, the judges and the SCM members do not disclose their conflicts in practice, especially those related to affinity

(e.g. godfather). The monitoring team urges Moldovan authorities to implement comprehensive corruption prevention policies in practice. Corruption risk management, ethics, conflict of interests' disclosure and management, whistleblowing policies should be introduced by the law and in practice to avoid and reduce the conflict of interest in the decision-making process among the SCM. Furthermore, it is advisable for the SCM to adopt Rules on ethics and conflict of interest for the SCM members as a role model for promoting the integrity and prevention of corruption among the judges. These rules could be accompanied by confidential counselling and training for the leaders in the judiciary (SCM members, presidents of the courts).

The Government questionnaire did not include answers on this issue. However, civil society has stated that although the Ethics Committee adopted rules on conflict of interest, Judges and the SCM members do not disclose their conflicts, especially those related to affinity (e.g. godfather). The Commission consists of five members, selected exclusively from SCM judge members (SCM law professors/civil society members, or the SCM president cannot serve in the Ethics Commission). No information was provided of any results or decision given by this body.

According to Article 18 of the Law on the Superior Council of Magistracy no. 947-XIII of 19 July 1996, a member of the Council may not take part in the examination of a matter and shall be recused if there are circumstances which exclude his participation in the examination or circumstances which would raise doubts as to his objectivity. In the event of such circumstances, the member of the Council shall be obliged to declare self-recusal. See, for example, SCM Decision of January 26, 2021 nr. 28/2 regarding the declaration of abstention of a member of the Superior Council of Magistracy from the examination of the issue regarding the request of a judge concerning the transfer to the Buiucani headquarters of the Chisinau Court of First Instance.¹⁵

Indicator 5.6. Distribution of cases among judges is transparent and objective; judicial decisions are open to the public

Assessment of compliance

Benchmark 5.6.1.

Distribution of cases among judges in all courts is automated and ensures transparent and objective case assignment excluding any undue internal or external interference

Law 514/1995, Art. 61 includes the rule of distribution of cases amongst judges based on a random distribution of files through the Integrated File Management Program (IFMP). This concerns cases in courts of all jurisdictions (except CC, which is not covered by this PA). If the judge to whom the case has been assigned is unable to continue a trial, a reasoned decision of the President of the Court must be enacted to allow for a random redistribution through the IFMP for its assignment to another judge. The data sheet on the random distribution of the files must be attached to each file.

¹⁵ [Consiliul Superior Al Magistraturii](#)

The SCM Regulation 110/5 2013 on the random distribution of files for examination in the courts states that the files are randomly distributed only once (Point 7). In cases where, during the process, procedural incidents occur, the following rules apply:

- The requests regarding the recusal or abstention of the judge, as well as the requests regarding the speed up examination of the case will be examined immediately on the same day. In this context, the President of the Court will establish the panel to examine the request for recusal or abstention at the beginning of the year (not less than 1 month). Files on requests for recusal, abstention and requests will be redistributed automatically through the IFMP.
- If the judge to whom the case has been assigned is unable to continue its examination because he is on medical leave exceeding or following dismissal or death, the President of the Court, ensures, through the IFMP, the random redistribution of the file to another judge.
- If the judge to whom the case has been assigned is unable to continue its trial due to transfer to another court, promotion, suspension, secondment or dismissal, the responsible person, the President of the Court, ensures, through the IFMP, the random redistribution of the file to another judge or another court panel (except when the SCM has granted an extension).
- The President of the Court may also order the random redistribution of the file to another judge or another panel of judges in other justified cases, with the issuance of a reasoned decision.

Therefore, the role of the President of the Court in all these cases is limited to redirecting the file back into the IFMP for random case allocation, which does not contradict the requirements of the benchmark.

Civil society organization stated that they are not aware of the reported specific cases of manipulation of the distribution of cases and that the Court Administration Agency is publishing reports periodically on case distribution. They, however, stated that current distribution system could be improved to take into account the complexity of the examined cases in order to ensure more even workload among judges and that it could benefit from the technical audit to find the problems and/or persons involved in manipulations if they occur.

Benchmark 5.6.2.

All judicial decisions delivered in open proceedings are published online

Law 514/1995, Art. 10(4) states that the organization of the judiciary, judgments of courts and courts of appeal shall be published on the national web portal of the courts. The decisions of the SC are published on the website of the SC. SCM Regulation 658/30 2017 on the publication of judgments on the national portal of courts and on the website of the SC states that the publication of judgments on the national portal of the courts or, as the case may be, on the website of the Supreme Court of Justice may be limited only to certain circumstances.

Civil society did not have any major criticism of the system and reiterated that court decisions at all level (except those examined in closed procedures, i.e. those concerning adoption, sexual crimes, arrests, etc.) are available for free with some (minor) technical limitations. They did state, however, that the information is sometimes delayed along with a lack of well-reasoned decisions.

Taking into account that regular online publication of the judgments represents a very important anti-corruption tool; the authorities are invited to elaborate on the process of the regular control and inspection

in the courts over the timely online publication of the court decisions. This shall be followed up on in the 5th round of IAP monitoring

Indicator 5.7. Judges are held accountable through impartial decision making procedures that protect against arbitrariness

Background

Disciplinary and dismissal proceedings in Moldova involve the following bodies: the Judicial Inspectorate, the Disciplinary Board, the SCM, the appellate court and the SCJ. The Judicial Inspectorate is in charge of receiving the disciplinary complaints, investigating them and bringing those with merit to the Disciplinary Board. The Disciplinary Board examines the disciplinary cases initiated by the Judicial Inspection and takes a decision to sanction the judge or to dismiss the case, which is subject to appeal before the SCM. The SCM examines the appeal regarding the Disciplinary Board decision, on merits and procedure. After the Administrative Code came into force, the SCM's decisions became appealable in two-level courts: the appellate court and the Supreme Court of Justice (SCJ). In effect, if the case is appealed, at least over 30 persons are involved in the review of the disciplinary case, and include 1 SCM staff from the Registry, 1 judicial inspector, 3 members of the Admissibility panel, 9 Disciplinary Board members, 15 members of the SCM, 3 judges of the appellate court and 5 SC Judges.

The competence of the Judicial Inspectorate among others includes examination of petitions regarding the ethics of judges; verification of complaints regarding disciplinary liability of judges; and verification of applications addressed to the SCM to authorize the criminal prosecution against judges. According to the Law 947, the Judicial Inspectorate consists of seven inspectors-judges. One of the inspector-judges is the Chief Inspector-judge. The Law 137/2018 moved the Judicial Inspectorate from under the subordination to SCM and granted it with functional autonomy. Inspectors-judges are employed full-time. Their secretariat is administered by the SCM.

According to Law on SCM and the Law 178/2014 on disciplinary liability of judges, the Disciplinary Board is an independent body that examines the disciplinary cases regarding judges and resigned judges for acts committed during their duties, and applies disciplinary sanctions. The Disciplinary Board is composed of nine members, which include five judges and four representatives from civil society/academia. The mandate of the Disciplinary Board members is for six years. The members cannot be elected or appointed for two consecutive mandates.

Assessment of compliance

Benchmark 5.7.1.

Grounds and procedures for the disciplinary liability and dismissal of judges are clearly stipulated in the law

In Moldova, the grounds and procedures for disciplinary liability and dismissal of judges are regulated in the primary law. In particular, the Law on disciplinary liability of judges regulates all matters related to the disciplinary liability of judges and the Law on the status of the judge defines misconduct and related disciplinary sanctions, as well as regulates issues related to dismissal. This is in line with the benchmark.

As to procedures, the Law on disciplinary liability of judges describes in detail the main stages of the disciplinary 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), which is in line with the benchmark. The procedure for dismissal is regulated in the Law on status of the judge and seems to be clear with all steps of the dismissal stated and explained in the law. This is also in line with the benchmark.

Further, to comply with the benchmark, the grounds for disciplinary liability and dismissal need to be formulated narrowly and unambiguously (avoiding such general formulations as “breach of oath”, “unethical behaviour”, “improper performance of duties”). In Moldova, the grounds for disciplinary liability, under the Law on disciplinary liability of judges, include:

- intentional or grossly negligent non-observance of the duty to recuse oneself when the judge knows or ought to have known that there is a situation obtaining that is prescribed by law for his or her recusal; as well as making repeated and unjustified statements of recusal in the same case, which has the effect of delaying the examination of the case;
- adoption of a judgment by which, intentionally or through gross negligence, there has been a violation of the fundamental rights and freedoms of natural or legal persons, guaranteed by the Constitutional or international treaties to which Moldova is a party;
- actions of the judge in the process of justice administration that demonstrate serious and obvious professional incompetence;
- the interference in the justice delivery of another judge;
- unlawful interference or exploitation of the position of judge in relation to other authorities, institutions or officials either for the settlement of claims, pretending or acceptance of the solving of personal interests or of other persons, or for the purpose of obtaining undue advantage;
- non-observance of the secrecy of the deliberations or the confidentiality of activities that have this character, as well as of other confidential information that judge gained due the exercise of his duties, in accordance with the law;
- breach due to reasons imputable to the judge, of the deadlines for performing procedural actions, including deadlines for drafting court judgments and submission of their copies to the participants in the proceedings, if this has affected directly the rights of the trial participants or other persons;
- unjustified absences from work, delay or departure without objective reasons from work, if it affected the activity of the court;
- violation of the imperative legal norms in the process of justice delivery;
- failure to fulfil or delay or inadequate performance of a service obligation, without reasonable justification, if it has directly affected the rights of trial participants or other persons;
- undignified attitude in the process of justice delivery towards the colleagues, lawyers, experts, witnesses or other persons;
- violation of the provisions on incompatibilities, prohibitions and service restrictions affecting judges;
- non-compliance with the provisions of the Law on Institutional Integrity Assessment;
- obstructing, by any means, the work inspector-judges;
- other actions that affect the honour or professional integrity or prestige of justice to such an extent as it affects the trust in the judiciary, committed while performing service duties or outside them, which, by their gravity, cannot be qualified only as breaches of the Code of Ethics and Professional Conduct of Judges;

- a disciplinary offence committed by court presidents and deputy presidents is non-fulfilment or fulfilment with delay or inadequate fulfilment, without a reasonable justification, of a duty provided in Art. 161 of the Law no 514 on judicial organization and if this has affected the activity of the court.

Civil society considers them ambiguous. In particular, they point out to the need to strengthen the practice of the SCM and their interpretation criteria (i.e. legal definition for “gross negligence”). Extensive analysis pointing out the ambiguities is contained in the report analysing the system of disciplinary liability of judges in Moldova prepared by Legal Resource Centre for Moldova in July 2020. For example, it provides references to three interpretations of “gross negligence”: one found in Annual report of the Judicial inspection, another in the decision of the Admissibility Panels of the Disciplinary Board affiliated to the SCM, and a third definition provided by the plenum of the SCM.¹⁶

The monitoring team agrees and believes that the notion of “gross negligence” should be clarified through guides issued by the SCM and accompanied with a court practice so that legal certainty principle is implemented and judges know well in advance the grounds for the disciplinary procedure and its possible outcomes. The notion of “actions that affect the honour or professional integrity and prestige of justice” seems to be too broad as well; another notion of “serious and obvious professional incompetence” also raises concerns and is open to interpretation.

Following the on-site visit, Moldovan authorities provided further explanations in regards to the notion of “gross negligence”, stating that Art 42 (2) of the Law on disciplinary liability of judges elaborates on the notion and defines it as “if the judge admitted a violation of certain rules of material or procedural law or committed an act provided in Art. 4 (1, p) without realizing a possible prejudicial consequence of his action or inaction, although he could and should have foreseen it. The lack of foresight manifested by the judge must be inexplicable from the point of view of a legal professional.”

The grounds for dismissal include a judge committing misconduct that harms the interest and prestige of justice; repeated committal of disciplinary offences, listed in Art. 22 (1) of the Law on status of judges and when within the evaluation an obvious unsuitability to the held position is found. In addition, the judge shall be dismissed in cases of transfer to another position, final judgement of his or her conviction, loss of citizenship, breach of incompatibilities, listed in Art. 8 of this Law, incapacity to work as evidence by medical certificate and expiration of powers in case of non-appointment until retirement age. Similarly, the notion of “harming the interest and prestige of justice” and “unsuitability to the held position” require clear explanations.

Benchmark 5.7.2.

Application of disciplinary and dismissal procedures to judges is perceived by main stakeholders to be impartial

Some NGOs stated that they perceive disciplinary and dismissal proceedings applied to judges impartial. They did however state that sometimes concerns arise on the proportionality of decision. In 2020, out of 1 121 notifications, the Judicial Inspections only started 16 investigations and only 4 sanctions were applied (2 warnings and 2 reprimands). Other non-governmental stakeholders expressed the view that the

¹⁶ Legal Resources Centre From Moldova “[Analytical Document](#)” (2020)

application of the procedures was not impartial but in fact done on a selective basis. This doesn't does not allow the monitoring team to conclude that the benchmark is met.

Benchmark 5.7.3.

Court presidents, including Supreme Court chief judge, do not have a role in the disciplinary proceedings against judges

Following the judicial reforms, only the Judicial Inspector is vested with the power to initiate the disciplinary proceedings against judges. The court chairperson (court president), like any judge of the common courts, is entitled only to address the Inspector indicating the disciplinary misconduct allegedly committed by a judge, the final decisions rest with SCM and appeals with the special panel of the SC.

In accordance with the provisions of Article 24 (1) of Law on SCM, the SCM shall adopt decisions by the majority of votes of present members. According to Article 3, Paragraph 2 of the same Law, the President of the Supreme Court of Justice, the Minister of Justice and the General Prosecutor are full ("ex-officio") members of the SCM. In adopting decisions on the career of judges, their disciplinary liability, sanctioning and dismissing judges, the full ("ex-officio") members of SCM participate without the right to vote. In this regard, the President of the Supreme Court of Justice does not participate in disciplinary proceedings against judges

Benchmark 5.7.4.

There are procedural guarantees of the due process for a judge in the disciplinary proceedings, including the right to be heard and employ a defence, the right of judicial appeal

In Moldova, the minimal legal requirements of the due process for a judge in the disciplinary proceedings as required in the benchmark are met. Article 25 of the Law on disciplinary liability of judges, provides for the right to be heard and produce evidence, the right to employ a defence counsel, the right to appeal disciplinary decision in court.

Benchmark 5.7.5.

The final decisions regarding judicial discipline are published online including their justification

According to the information provided by the government and civil society, final decision are available and published on the SCM web page with no restrictions.

Benchmark 5.7.6.

There is no criminal or administrative punishment for judicial decisions (including for wrong decision or miscarriage of justice), or such sanctions are not used in practice to exert undue influence on judges.

There is criminal punishment for Issuing a Sentence, Decision, Ruling or Judgment Contrary to the Law (Criminal Code, Art. 307). Non-governmental stakeholders were not aware of any cases brought under this article in 2020. However, there are several earlier cases spanning the timeframe from 2016-2018. According to the information provided by the Moldovan authorities, Art. 307 is being applied in practice, currently there are 16 cases pending in courts and in three, there have been a court decision, with two convictions.

Benchmark 5.7.7.

Proportionate and dissuasive disciplinary sanctions are routinely applied to judges

To decide whether there is a system (routine) of application of sanctions that are considered proportionate and dissuasive; in other words, whether most sanctions are proportionate and dissuasive, and only rarely disproportionate or not dissuasive the monitoring team needed to review and analyse the range of available sanctions, statistics on their application during several years, opinion of stakeholders, existing reports and studies, other sources of information.

In Moldova, Law on disciplinary liability of judges (Art. 6) includes a range of sanctions to be applied. These includes warnings ; reprimands of reprimands or reduction of salary. Removal from office is also an option as a last resort and only for the gravest conduct. In addition to the disciplinary sanctions from letter (a) to (c), judges who hold the office of court president or vice-president can also be dismissed from administrative office. There is also a set of criteria to determine the severity of the sanctions (Art. 7). The Law on the status of judge also lists disciplinary sanctions and specifies when dismissals can be applied (Art. 23).

According to statistical data, provided by Moldovan authorities following the on-site visit, in 2019 13 disciplinary proceedings have been initiated with six resulting in application of the "warning"; another six – in application of "reprimand"; and one case initially resulted in "dismissal" and later was overruled through appeal with the sanction of "reprimand" being applied instead. In 2020, 16 proceedings were initiated; in seven cases "reprimand" was applied, in six case – "warning" was applied, and in 3 cases the judges were dismissed, they appealed such decisions but the decisions were upheld by the SCM. The dismissal was applied in one case for violation under Art. 4 g (breach of the timelines for fulfilling the procedural actions, of the deadlines for drafting judgments and of delivering their copies to the trial participants); and another case for the same violation, in addition to Art. 4 j (non-fulfillment or delayed fulfilment of a duty, without due reasons); and in the third case for violation of Art. 4 j and p (other actions affecting the honour or professional integrity or reputation / prestige of justice, committed in performance of duties or outside it).

In the first six months of 2021, 3 disciplinary proceedings have been initiated and resulted in reprimand, warning and dismissal; they have not been yet appealed. Dismissal was applied for violation of Art.4 g, j, p and i (breach of legislative imperative norms in the process of justice administration / delivery).

Having considered this information on its face without knowing the substance of the cases, the monitoring team observes that a number of initiated proceedings is not a remarkable number to show that the standard for effective, dissuasive and proportionate disciplinary sanctions is applied in the practice. It also notes that in the first half of 2020, the number of disciplinary proceedings and sanctions applied has considerably dropped, which undermines the notion of routine application. The sanctions applied are almost the same (reprimands and warnings), In absence of publicly available motivation of the disciplinary decisions and in the context of the complex disciplinary procedure, with multiple bodies involved, this might raise concerns

that there is lack of individualization of the sanctions, lack of a variety of the sanctions available and a ground for suspicion in the efficiency and effectiveness of the whole process (it can be seen as a pure formality). The SCM can be invited in cooperation with the CSO to conduct a research on the disciplinary cases and sanctions.

Non-governmental stakeholders stated that disciplinary sanctions are sometimes not applied proportionally to judges in similar cases. They further opined that due to complexity of the legal disciplinary mechanism: with five state entities and over 30 people being involved in deciding whether a judge is amenable to, say, a warning because he or she was too late at work, did not wear a robe during a hearing or was four months slow in drafting a court decision, there is a high chance that no disciplinary sanction will be applied. This seems to be the case, especially in the first half of 2020.

Based on the information above, the monitoring team cannot confirm routine application of proportionate and dissuasive disciplinary sanctions to judges.

Benchmark 5.7.8.

All public allegations of corruption of judges were thoroughly investigated with justified decisions taken and explained to the public

The monitoring team was not provided with specific cases of the public allegations of corruption of judges, which were not investigated. However, the non-governmental stakeholders stated that not all the public allegations of corruption of judges are thoroughly investigated. In fact, they maintained that investigations are selective, although most cases once taken up by the investigative authorities are explained to the public.

6 Independence of public prosecution service

Current Prosecutor General of Moldova is appointed for a relatively long term without the possibility of reappointment. Both the Superior Council of Prosecutors (SCP) and a Ministerial Commission, formed of professionals, played a key role in his appointment. However, the decisions of the SCP have not been duly motivated in this process. While dismissal of the PG is based on clear and objective criteria, the procedure itself requires clarification.

SCP functions based on law and plays an important role in the self-administration of the prosecution system. It has broad responsibilities for the functioning of the prosecution service, including all questions of career and discipline of prosecutors. However, transparency of its work and impartiality are not fully ensured in practice. Its composition is problematic: the prosecutorial members, as well as lay members do not constitute a substantial part, and the ex officio members currently dominate it. This contributes to perception of its partiality and lack of independence.

Although the legal procedures for both recruitment and promotion are in general in line with the international standards, concerns have been raised that the prosecutors lack individual independence and that the nepotism and diverse affiliations negatively impact the activity of the prosecution service and the public perception about it and that extends to the process of recruiting and promotion. Public perception of corruption among prosecutors being properly investigated is low.

Similarly, clear grounds and procedures for disciplinary liability and dismissal of prosecutors are stipulated in the law but their application is not perceived to be impartial. Publication of the final decisions or case summaries regarding discipline of prosecutors are not ensured in practice, although required by law. The prosecutors in Moldova have sufficient procedural guarantees of the due process in disciplinary proceedings. They also have the right to challenge orders from the superiors, but do not exercise it.

The budget of the public prosecution service appears to be reasonable. However, the system of remuneration of prosecutors needs to be thoroughly analysed in order to ensure the autonomy of the prosecutors and reduce the risk of corruption, as well as to enhance the motivation of the prosecutors.

Indicator 6.1. Prosecutor General is appointed and dismissed transparently and on the objective grounds

Assessment of compliance

Benchmark 6.1.1.

The body of prosecutorial governance (e.g. a prosecutorial council) or an independent expert committee (formed by professionals who are themselves selected through a transparent procedure based on merit) played a key role in the appointment of the current Prosecutor General, in particular by providing an assessment of professional qualities and integrity of candidates

The benchmark looks into the practice of appointment of the Prosecutor General (PG), and, in particular, the current PG. Legislative changes, which took effect since the last appointment will not be reviewed under this benchmark, so long as the appointed PG was still in the office at the time of the on-site visit. Any such changes will be captured in the next cycle of the 5th round of IAP monitoring, which is to be conducted annually.

This being said, to comply with the benchmark the country has to show that the current PG was appointed following the procedure that:

- involved a body of the prosecutorial governance (a prosecutorial council or a similar body) or an independent expert committee (comprising professionals who were selected through a transparent procedure based on merit);
- such a body or expert committee played a key role in the appointment, which means that, as a minimum, it reviewed all the candidates for the position and provided its assessment of their a) professional qualities and b) integrity and that such assessment was reviewed by the decision-making body before appointing the PG.

Current PG of Moldova was appointed in November 2019 and was still in the office at the time of the on-site. His appointment is therefore evaluated under this benchmark.

According to the Law 3/2016 on organization of the public prosecution service, the Superior Council of Prosecutors (SCP) organized the competition and played an important role in the appointment of the current PG. An important role in the appointment of the PG also belonged to a commission of experts set up by the Minister of Justice (Ministerial Commission). This Ministerial Commission included professional experts; namely, it was to be composed of the Minister of Justice, one former prosecutor or one former judge, one international expert, a reputable expert or tenured professor in law, one representative of civil society, and one additional reputable national expert appointed by the President of the Parliament.

The procedure used was the following: the Ministerial Commission preselects the candidates, based on documents analysis and interviews and proposes at least two candidates to the SCP. SCP interviews the preselected candidates and does the final selection. The best-scored candidate is proposed to the President of the Republic for appointment. The President may reject the proposal only once, based on evidence of incompatibility of the candidate with the position of PG, on the transgressing of the law by the candidate or on the violation of the selection procedure.

Current PG was selected based on this procedure, among four candidates preselected by the Ministerial Commission. The preselection procedure was transparent; the interviews of all the candidates have been published on the website of the Ministry of Justice (MoJ). However, the SCP did not motivate the choice it made among the four candidates proposed by the Commission. Subsequently, such assessment was not provided to and reviewed by the President before making the decision on appointment of the PG, which would be a required element to fully meet the benchmark.

On May 21 2020, the Constitutional Court of Moldova declared the involvement of the Ministerial Commission in the procedure of appointment of the PG unconstitutional. On July 24 2020, the Law on organization of the public prosecution service was amended accordingly and the commission was eliminated from the procedure. Currently, the SCP organizes the preselection of the candidates, based on the documents provided, and the selection, based on interviews. The selected candidate is proposed then to the President of the Republic for appointment. However, the constitutional decision and the amended law did not have a retroactive effect and the appointment of the current PG remains valid.

The monitoring team believes that both procedures for the appointment of the PG, involving only the role of SCP, or both SCP and an expert commission set up by the Government, could be in line with the benchmark, so long as the following conditions are met:

- the appointment of the experts themselves is transparent, based on merit;
- the experts enjoy public/professional credibility;
- the assessment procedure of the expert commission per se is transparent, merit based and performed in good faith;
- the SCP has the key role;
- the procedure provides for enough time and means to check the background, reputation and integrity of the candidates; and
- the public is informed with regard to the results of the above mentioned checks.

Equally, it would be beneficial for the public confidence in the fairness of the procedure for the SCP to motivate its decision and make it public.

Benchmark 6.1.2.

Prosecutor General is appointed for one long term (at least 5 years) without the possibility of reappointment

In Moldova, a sufficiently long mandate of 7 years is provided for the PG's tenure by the Law on organisation of the public prosecution service (Art. 17). The same Article provides that PG is appointed without the right to be reappointed in this position. This is in line with the benchmark.

Benchmark 6.1.3.

There is a clear and transparent procedure for dismissal of the Prosecutor General based on objective grounds that exclude political or other undue interference and there were no cases of dismissal outside of such procedure

Before July 16 2020, the law provided two paths for the dismissal of the PG before the expiration of his mandate. The first one, provided by Art. 58 para. 6 of the Law on organization of the public prosecution service, included objective reasons listed in the para 1 of the article, such as: submitting a resignation letter, enforcement of a disciplinary sanction, adhering to a political party, incompatibility, conflict of interests, etc. Under this procedure, the President of Moldova would issue the decree of dismissal. The second path was provided by para 7 of the Art. 58 and it described a supplementary procedure for dismissal, which could be launched based on the initiative of the President or of the Minister of Justice. A Ministerial Commission, similar to the one created for the appointment of the PG would be set up for evaluating allegations of illegal intervention of the PG in the activity of another prosecutor, an illegal intervention with state authorities of public officials for resolving any issues or for committing actions that seriously affect the image of the Prosecution Office or the independence of the prosecutors. The Commission would send its evaluation report to SCP. SCP would notify the President of Moldova with the request of dismissal of the PG if it appropriated the arguments of the Commission. Otherwise, SCP could reject the Commission's report only once.

The same CC Decree from 21 May 2020, recognized supplementary procedure for dismissal of the PG (under Art. 58, para 7 of the Law on organization of the public prosecution service) to be unconstitutional. The law was amended and currently, only the procedure regulated by Art. 58 para 6 of the law remains in force.

The procedure for dismissal of the PG is based on clear and objective criteria, as required by the benchmark. However, adding to these criteria the supplementary reasons for the dismissal of the PG that were included in the former paragraph 7 of the art. 58 deserve due consideration. Moreover, the law in its current form does not specify how the President of Moldova is notified, who is assessing whether the criteria listed in art. 58 para 1 are met or not, or if this assessment is performed at the President's cabinet or by another institution. The SCP does not have any role in this procedure. The law should clarify all these issues. In order to protect the independence of the prosecutors and to ensure that the dismissal of the PG is not motivated by political interference, it would be advisable for the law to include SCP with a key role in this procedure. A special body or committee, as indicated by the Venice Commission in its Opinion 972/2019, could also be set up support the work of the SCP by verifying the occurrence of one of the cases listed in art. 58 para 1. To be in full compliance with the benchmark, the law should also provide for publication of information about the outcomes of different steps (if there are several steps) and its final outcome.

The benchmark looks both into the quality of the law and actual practice of dismissal. As to the actual practice, the benchmark evaluates dismissal if it happened during the previous calendar year and in the run-up to the on-site visit. There were no dismissals in 2020. However, on July 11 2019, the Prosecutor-General was dismissed from office by the Decree of the President of the Republic of Moldova 1208/2019. This was done upon his submission of resignation in accordance with Art. 58, para 1 a) of the Law on organization of the public prosecution service (more details can be found under Benchmark 6.2.4).

Benchmark 6.1.4.

There is a wide perception among the main stakeholders that the current Prosecutor General was appointed through a transparent and merit-based procedure and that the dismissal of the Prosecutor General (if happened) was not politically motivated

Having in mind that the year 2020 was partially paralysed by the pandemic and that this is the first monitoring of Moldova, the monitoring team assesses the events that happened in 2019 as well.

In July 2019, the Prosecutor-General presented his resignation before the end of his mandate. This event happened after a decision of the Parliament acknowledging that he did not fulfil the conditions to be appointed as a PG and asking the President of Moldova to dismiss him.

The public perception was that the PG had infringed the independence of the prosecutors in carrying out the investigations by blocking high profile corruption and fraud cases.

The current PG, former Member of the Parliament, was appointed according to a procedure that was, subsequently, declared unconstitutional and removed from the law. However, the Constitutional Court stated that its decision should not be applied retroactively and therefore the appointment of the current PG remains untouched.

Although the preselection commission was formed in a regular way, there has been public criticism with regard to alleged irregularities in the way in which some of the members of the preselection commission noted, in a disproportionate manner, the candidates to be proposed to SCP. Concerns have been expressed in the public opinion that, because of the way in which the selection procedure was carried out, the result of the selection was not sheltered from politicization. The Government tried to cancel the procedure and renew it, but this move ended with the dismissal of the Government.

Indicator 6.2. Appointment and promotion of prosecutors are based on merit and clear procedures

Assessment of compliance

Benchmark 6.2.1.

Prosecutors are recruited based on competitive procedure clearly set in the law and based on merit

According to the Law on organization of the public prosecution service, the recruitment of the prosecutors is done by means of a competition (Art. 19) organized by a Board for the selection and career of prosecutors subordinated to the SCP (Art. 23 and 24). The candidates who fulfil the conditions for recruitment or promotion, stipulated in Art. 20, have to be included in a public register of candidates posted (Register) on the website of the SCP (Art. 22) before knowing whether vacancies, which ones or how many will be made public.

Candidates entered in the Register subsequently take part in the competition for appointment and are evaluated by the Board. The Board transmits the result of the evaluation to the SCP, as well as the

information about the persons who did not appear before the Board or refused to be evaluated. The SCP updates the Register and notifies all evaluated candidates of the date and place where they are called to choose vacancies. Candidates formulate the option verbally at the meeting. In case of impossibility to participate in the meeting, the candidate formulates his or her option by e-mail, sent to the Council's apparatus before the date of convening the candidates. In the e-mail, the candidate expresses several options. The options contain the vacancies desired by the candidate, indicated in descending order of preference. The result of the competition should be published on the SCP website within one working day of the drawing up of the minutes by the Council apparatus.

SCP Regulation, approved by the SCP Decision 12-225/16 (SCP Regulation), stipulates that the Board periodically announces the competition, usually every 6 months (point 8.14). The announcements of the competitions are placed on the SCP's website. The non-governmental stakeholders however shared that while the SCP is mandated to organize contests twice a year, this rule is not respected. There is a practice to announce separate vacancies per prosecution office, although the law requires that all vacancies per system to be announced in a single contest. This can potentially limit access to vacancies.

The prescribed rules are not clear with regard to when the vacancies are made public. The only legal provision, albeit general, is given by art. 24 para 1 of the same Law, which states that SCP makes public periodically the vacant positions and the positions that will become vacant in the following 3 months by placing the information on SCP website.

The SCP Regulation, approved by the SCP Decision 12-225/16, provides that the participation of the candidate in the interview organized by the Board is compulsory and that the Board informs the candidates by email about the date and place where the interview will take place. In case of unmotivated non-show, the candidate is excluded from the register.

In practice, the SCP publishes on its website the positions put up for competition and indicates the deadline (usually between a few days and 4 weeks) until the potential candidates can send an option for a position. It is not clear though how much time they have until the dates set for the interview in front of the Board. It would be advisable that either the law or the regulation of the recruitment and selection procedure provided for a *de minimis* period before the competition date when the vacancy is announced, so that the candidate is duly informed and has enough time to prepare.

The benchmark looks into the law and practice. To fully meet the benchmark, the "competitive procedure" of recruitment and promotion should include publication of vacancies online, which is done in Moldova. However, the Guide explains that the procedure may be considered not competitive, in particular, if insufficient time was provided to apply or if the publication was made in a way to limit possible candidate applications. It appears that this element is not met in Moldova, at the very least in practice.

The selection criteria are listed in the Law on organization of the public prosecution service and regard elements such as the professional knowledge, practical experience, seniority, respect of the ethical behaviour (Art. 23). The selection is done based on the scores obtained by the candidates, following a detailed procedure provided by this law (Art. 23).

According to Art. 20 of the Law on organization of the public prosecution service, the new recruits should be either graduates of the National Institute of Justice (NIJ), or former legal professionals with at least 5 years of seniority in certain legal professions. The latter have to pass an exam in front of the Graduation Commission of NIJ in order to be included in the Register of the candidates. However, in the case of the persons having exercised a legal profession for at least 10 years, they can be included in the Register without passing such an exam.

The law provides for the possibility of the candidates to challenge the decision of the Board in front of the SCP.

The appointment of the prosecutors thus selected is done by the PG at the proposal of SCP. The possibilities of the PG to refuse the appointment are limited, he can refuse once and if the SCP reiterates the same proposal, it is obligatory for the PG.

The above described elements are in line with the benchmark.

Benchmark 6.2.2.

Prosecutors are promoted based on competitive procedure clearly set in the law and based on merit

The same rules and procedure that apply for the initial recruitment apply as well for the promotion of the prosecutors, as described above. The candidates should be included in the Register. An additional requirement for them is to have been submitted to a performance evaluation during the last two years.

In the case of promotion to the PG Office or to the specialized prosecution offices, the Regulation on selection and promotion of prosecutors provides for additional requirements. First, the Board will supplementary evaluate the candidates with regard to their abilities for exercising the attributions of the specific positions they are competing for. Also, the candidates for positions of chief prosecutor or deputy chief prosecutor will be supplementary evaluated with regard to their managerial abilities. Second, the Board requests the written opinion of the PG or of their deputies.

The way of scoring is provided by the law: 50% represented by the result of the performance evaluation and 50% by the evaluation of the Board. However, it is not clear how much the opinion of the PG counts in the final scoring.

The participation of the PG with its opinion in the procedure is not a problem per se. It is natural for the head of the Prosecution Service to be concerned of the quality of the prosecutors that will be selected and will have to perform for the highest level of the Service. The problem is the lack of transparency of this element of the procedure. Could the opinion of the PG be as strong as to determine the rejection of a candidate even if he/she had a good score based on the objective criteria of the Board evaluation? The PG already should have the possibility to express his/her opinion as a member of the SCP when the Board presents the proposals of the selected candidates to the Council.

A special procedure is provided by the lawThe law provides a special procedure for the chief prosecutor of the Prosecution Office of the Autonomous Territorial Unit of Gagauzia. The candidate is selected by the People's Assembly of Gagauzia, according to the Law on organization of the public prosecution service and the regulation of SCP, based on a competition organized by a special local commission. The selected candidate is then proposed to the SCP for verification and appointment. If the proposal respects the conditions and criteria provided by the law no. 3/2016 and the SCP Regulation, the SCP forwards it to the PG who will appoint him/her. The competence of the competition commission, the procedure and the selection criteria are provided by a local law adopted by the above-mentioned Assembly. According to the authorities, ATU Gagauzia did not yet adopt the law,law; thereforetherefore, we cannot assess the compliance of the procedure for selecting the chief prosecutor of Gagauzia against the monitored standards. Currently, there is an acting chief prosecutor representing Gagauzia.

Although the legal procedures for both recruitment and promotion are in general in line with the international standards, the monitoring team heard concerns of the civil society and international organizations present in Moldova that the prosecutors lack individual independence, that the nepotism, the diverse affiliations (political, economic, family relationships within the legal sector – judges, prosecutors, lawyers, etc.) negatively impact the activity of the prosecution service and the public perception about it and that extends also on the process of recruiting and promotion.

Benchmark 6.2.3.

The vacancies, with the terms and conditions, and results of all stages of the selection and promotion of prosecutors are announced online.

The benchmark requires that all stages of the selection and promotion of prosecutors are publicized online – from the publication of vacancies (including terms and conditions for participating in the selection or promotion), to the examination of candidates (if applicable), and announcement of the final decision. This is not the case in Moldova, which is not meeting some of the elements of this benchmark. Please see the issue described under Benchmark 6.2.1.

Indicator 6.3. The budget of the public prosecution service and remuneration of prosecutors guarantee their financial autonomy and independence

Assessment of compliance

Benchmark 6.3.1.

The funding received by the public prosecution service is sufficient to ensure its autonomy

The draft budget of the Public Prosecution Service is developed by the General Prosecutor's Office, and is approved by the Superior Council of Prosecutors. The SCP surveys the funding needs of the prosecution service and proposes the budget to the Government. According to the authorities, the budget of the Prosecution Service increased every year for the past three years. In particular, in 2018 it constituted 345 million lei; in 2019 – 349 million lei; in 2020 – 365 million lei.

As regards the training, the budget of the public prosecution service does not include funding for training, as it is the mandate of the National Institute of Justice to organize and provide training for prosecutors along with the judges. Every half a year, the NIJ approves a training plan. Most recently, on April 20 2021, the Permanent Commission for Training, set up by SCP, consulted the prosecutors and recommended to the SCP the topics for the continuous training of the prosecutors. The training plan is enriched by the training offers provided by the international partners.

To conclude, the monitoring team encountered no evidence that the funding allocated to the prosecution service in 2020 was insufficient to ensure autonomy of the public prosecution service and Moldova therefore meets the benchmark.

Benchmark 6.3.2.

The level of remuneration of prosecutors is fixed in the law, does not depend on the discretion of superior prosecutors and is sufficient to ensure the autonomy of prosecutors and reduce the risk of corruption

To meet the benchmark, the primary law should regulate the amount of remuneration received by different levels of prosecutors, and if payment of bonuses exists, it should be based on clear and pre-established criteria, and following objective performance evaluation of prosecutors, excluding fully discretion of the superior prosecutors.

In Moldova, the Law 270/2018 on the unitary pay system in the budgetary sector regulates the amount of remuneration received by prosecutors (Art. 10, para 3). It also stipulates that the salary consists of the fixed part (base salary) and the payments listed in Art. 10, para 2. Accordingly, the wage of prosecutors consists of:

- base pay;
- compensatory allowances for work in adverse conditions;
- overtime bonuses, work at night and/or work in non-working holidays and/or the days off;
- the allowance for participation in the projects of development financed from external sources;
- one-time rewards;
- annual bonus.

In practice, the prosecutors receive only a base pay, one-time rewards that are awarded with the order of the General Prosecutor on holidays (Public Prosecution Service Day; Independence Day, New Year etc.) and an annual bonus that is determined and awarded by the Government. The amount of a one-time reward can'tcannot exceed one base pay. In 2020, only two one-time rewards have been granted and in total did not exceed half of a base salary. The amount of an annual bonus,bonus is determined each year by the Government (e.g. in 2020 it was 50% of a base salary for the previous year). This is in line with the requirements of the first element of the benchmark.

The second element requires the sufficiency for autonomy of prosecutors and to reduce the risk of corruption. This element has been assessed based on factual information, the opinions of the authorities, in particular, the prosecution service and that of non-governmental stakeholders.

The prosecutors' salaries represent 90% of the salaries of judges. The average salary of a prosecutor varies from 14.500 to 16.000 lei (approx. 680-750 euro), while the average salary in 2020 was 8.100 lei.

Even if, in absolute value, the salary of the prosecutors could seem to ensure their independence, the problem appears when it comes to the legal system of calculating and adjusting the salary of prosecutors (as well as of judges) according to the economic conditions of the country every year. The law has been changed in 2018 and since then the calculation of the salary of prosecutors is no longer dependent on objective economic factors, but on the size of a reference value set by the Parliament every year. Thus, prosecutors' salaries depend on the will of the political party, which undermines some of the institutional independence.

Another element that could negatively influence the salary of the prosecutors, as well as that of the judges, is the mechanism of the new law on the unitary payment system in the budgetary sector that envisages

the progressive increasing of the reference value for the salaries of all the public servants, while the reference value for the salaries of judges and prosecutors (called derogatory) remains unchanged. That, in time, will annul the difference that at present provides a certain financial comfort and thus, the motivation of the prosecutors (as well as for the judges).

Moreover, the salary grid provided for the various positions in the Prosecution service does not present enough incentives for the progression in the career. Thus, for example, the salary difference between a prosecutor with 12 years seniority and a new recruit is of only 75 euro. Also, the system of moving to a higher level of payment based on length of service is not well balanced, it occurs once in 6 years (0 to 6 years, 6 to 12 years and above) for prosecutors of territorial Prosecutor's Offices and once in 16 years for those of the General Prosecutor's Office and specialized Prosecutor's Offices (up to 16 years and above). No additional remuneration is provided to those prosecutors assuming managerial functions.

Therefore, the system of remuneration in the Prosecution Service of Moldova needs to be thoroughly analysed in order to ensure the autonomy of the prosecutors and reduce the risk of corruption and, on the other hand, to enhance the motivation of the prosecutors to progress in their career and to assume higher responsibilities.

Indicator 6.4. Status, composition and operation of the Prosecutorial Council guarantee the independence of the public prosecution service

Assessment of compliance

Benchmark 6.4.1.

The Prosecutorial Council or other similar bodies are set up and function based on the law that defines their powers and mode of operation

According to the Law on organization of the public prosecution service, the SCP is an independent organ, set up with the purpose of ensuring the self-administration of the prosecution system and it is the guarantor of the independence and impartiality of the prosecutors. It is set up based on the primary law and operates in practice, as required by the benchmark. Chapter XI of the Law defines its powers (Art. 70) and includes main provisions on its operation, including how meetings are held and decisions are made, including their transparency (Art. 77), rules of recusal (Art. 78), appealing of the decisions (Art. 79), etc. The monitoring team was informed that in 2020, due to COVID-19 pandemic, law amendments were made to ensure that the mandates of the SCP' board members are prolonged until new members among prosecutors will be elected and SCP continues to function.

Benchmark 6.4.2.

The composition of the Prosecutorial Council or other similar bodies includes a substantial part (at least half) of prosecutors elected by their peers from all levels of the public prosecution service. The Prosecutorial Council is independent of the Prosecutor General and the executive branch

The benchmark has two elements and Moldova has to comply with both these elements. One element deals with the composition of the SCP, and another deals with SCP independence from the PG and the executive.

When assessing compliance of composition of the SCP, only those prosecutorial members of the SCP who were elected by their peers (that is by other prosecutors), representing all levels of the public prosecution levels, were counted. Ex officio members have not been counted, as other prosecutors did not elect them.

The composition of the SCP has been amended by law in 2019. Initially, the SCP was composed of 12 members, out of which 7 were prosecutors. After the amendment of the law, 3 other members, who are not prosecutors have been added (the President of the Bar Association, the Ombudsman, and a member of the civil society proposed by the Government). Currently, the composition of SCP includes 7 prosecutors, i.e. almost one-half of the members of the Council. However, these 7 prosecutors include the PG of Moldova and the chief prosecutor of ATU Gagauzia, i.e. two are ex officio members. In effect, the number of prosecutors elected by their peers is 5, which is less than half. This is not in line with the benchmark.

Another element under evaluation is independence of the SCP from the PG and the executive. Therefore, the monitoring team reflected on how independent the SCP is, in this composition, towards the PG. A self-governance body of the prosecution service could not justify its role of guarantor of the independence and integrity of the prosecutors, if itself, does not act as an independent body, separate from the individual authority of the members that compose it. Sometimes it may prove difficult for the prosecutors who have been elected as members of the self-governing body, but are at the same time hierarchically subordinated to the PG, to distance themselves from this authority. Therefore, some safeguards need to be adopted.

Thus, it is a positive step that, according to the SCP Regulation, the Council has, since 2018, its own, independent budget, drafted by the Council and submitted to the Ministry of Finance. However, the Council works in the same building as the PG office. The members of the Council consider that the level of their budget is decent but the positions of the staff members (civil servants, technical staff) are filled only by 50%. More efforts need to be done in order to fill in all the vacant positions of the Council.

Another positive element is that the president of the SCP is elected only from the members that are prosecutors elected by their peers. Therefore, nor the PG, neither the Minister of Justice can be presidents of SCP.

After the end of the mandate, the prosecutors who were members of SCP can choose any vacant position of prosecutor, with the exception of the position of chief prosecutor. Moreover, they are banned to participate in any competition for promotion for 6 months after the end of their mandate.

In practice, the monitoring team was told that the returning of the former members of SCP to a prosecutor position is too much dependant on the PG with regard to the vacant positions that are made available for these situations. Also, the prosecutors view the fact that the former member of SCP is forbidden to participate to a promotion competition as a form of discrimination.

A solution could be to preserve for the member of SCP at the end of mandate the position of prosecutor which he/she left when elected in the Council. The monitoring team believes, however, that the restriction to participation in promotion competitions may seem harsh, but its role is in fact to protect the independence of the members of the Council and to avoid the perception that a member of the Council could take advantage of his/her position as a member to “arrange” a future promotion, once the SCP mandate ends.

Finally, when assessing independence, the evaluation team took into consideration perceptions expressed by the non-governmental stakeholders. In particular, views were shared that, in practice, the SCP is obedient and dependent on the General Prosecution Service, and that due to the current composition of the SCP with extensive powers exercising its first mandate, it lacks institutional experience to fulfil its functions.

Benchmark 6.4.3.

The composition of the Prosecutorial Council or other similar bodies includes a substantial number (if not half) of non-prosecutorial members who represent the civil society or other stakeholders that have public trust (e.g. academia, law professors, human rights defenders, NGO representatives), have an appropriate legal qualification and are selected through a transparent procedure based on merit

According to Art. 69 of the Law on organization of the public prosecution service, the composition of the SCP includes 4 non-prosecutorial members are elected by competition from the civil society, as follows: 1 by the President of the Republic; 1 by Parliament; 1 by the Government; and 1 by the Academy of Sciences of Moldova. Candidates for the position must have higher law education and at least 3 years of experience in the field of law.

While the inclusion of four non-prosecutorial members of the SCP representatives of the civil society is a positive element, it brings a pluralistic composition to the Council, preventing it from becoming too corporatist, their number falls short of the minimum required by the benchmark of at least more than 1/3 of the composition being lay members.

Furthermore, their election procedure is not provided by law, but, as far as the Moldovan authorities stated, by the regulations of each of the bodies that should elect them. However, the monitoring team has not been provided with the regulations regarding these procedures, nor with information on how these procedures have been applied, so it is difficult to assess how transparent the election has been, if it was based on merit and if the choice was not based on political affiliations.

Currently, among the representatives of the civil society in the SCP there are three law professors and one representative of an NGO who fights against domestic violence. However, it would be beneficial if more representatives of NGOs active in the field of justice reform and human rights were members of the SCP.

The representatives of civil society have the same voting rights as the prosecutors in SCP. However, a representative of the civil society cannot become president of SCP, as this position is reserved to a prosecutor. Taking into consideration the necessity that the prosecutors have a substantial weight in the Council in order to ensure its representativeness and to promote the independence of the prosecution system, having a prosecutor as president is not a bad solution.

A specificity of the Moldovan SCP is the significant number of *ex officio* members. There are six of them: the PG, the Chief prosecutor of Gagauzia, the MoJ, the president of the Superior Council of Magistracy, the president of the Bar Union and the Ombudsman. They are the largest category represented in the SCP, larger than the group of prosecutors, as well as the group of civil society representatives.

The question is if such a large number of *ex officio* members, heads of public authorities, is justified by the mandate of the SCP as the representative body and guarantor of the independence and impartiality of the prosecutors.

It would be preferable to limit the number of *ex officio* members in favour of those elected by the profession they represent, as well as ensure that the non-prosecutorial part of the Council is substantial enough to influence the decision of the Council.

Finally, the non-governmental representatives met by the monitoring team did not believe that the non-prosecutorial members selected from the civil society represented the civil society. Some expressed views that only the appointment of the non-prosecutorial member by the Government was made on merit. They further opined that in important cases when the voice was needed (e.g. amendments to the internal rules, promotion or transferring prosecutors), there were no objection made by these lay members.

Benchmark 6.4.4.

There is a wide perception among the main stakeholders that the Prosecutorial Council or other similar bodies operate independently and impartially without political or other undue interference in their work

The perception that the monitoring team could grasp on the SCP was that it is not seen as independent. Firstly, the authority of the PG is manifested in practice very strongly with regard to the other prosecutors, members of SCP. It seems that no opinions different than his are expressed in the Council.

The insecurity of the position assigned to the members of the Council once the mandate ends is also an element that acts with an inhibitory effect for the SCP prosecutorial members. With regard to the recruitment and promotion competitions organized by SCP, the perception is also of weakness; the interviews do not always seem to reflect an independent decision of the SCP members.

As was already discussed under benchmarks 6.4.2 and 6.4.3, the non-governmental stakeholders expressed views that although the political influence was limited, the corporate influence from certain groups of prosecutors was evident, especially on appointment of prosecutors in key positions (e.g. appointment of the deputy PG while there was an on-going criminal investigation on illegal enrichment and an investigation at the National Integrity Authority on breaching the rules of declaring the assets and property). The SCP bodies did not use their powers and instruments to ensure that their work is not influenced by the PG. The proposals of the PG are being approved with almost no debates or questions from the SCP members, especially among civil society representatives.

Finally, prosecutors themselves when asked in a survey, conducted between October and December 2020 about the SCP activity, 76% of prosecutors considered it transparent, with 77% of prosecutors considering that its decisions were well reasoned, but only 47% of prosecutors consider that the SCP ensure the independence of prosecutors.¹⁷

¹⁷ Survey "[Perception of judges, prosecutors and lawyers on justice reform and fight against corruption](#)", Legal Resources Centre from Moldova (LRCM), December 2020

Indicator 6.5. The Prosecutorial Council has broad responsibility for the functioning of the public prosecution service, is transparent and impartial

Assessment of compliance

Benchmark 6.5.1.

The Prosecutorial Council or another similar body is responsible for all questions of the career (including selection, promotion, transfer) and discipline of prosecutors

The SCP has a key role in the procedure regarding the career – initial recruitment, promotion, transfer – and disciplining of the prosecutors, prescribed by art. 68 of the Law on organization of the public prosecution service and detailed in the Regulation of the Council. It organizes the competition for the recruitment of the prosecutors; the competition for promotion of the prosecutors, including for the selection of the PG. SCP proposes to the PG the appointment of the candidates to the positions of prosecutor and chief prosecutor resulted from the competition and organizes the transfer of the prosecutors to other positions of equal or lower level, at the proposal of the PG. However, it has no role in assessing the reasons for dismissing the PG.

Under the SCP there are three boards that have the main role in organizing and carrying out the procedures of selection of the candidates to the positions of prosecutors and chief prosecutors, of the periodical performance evaluation of prosecutors as well as on the discipline. These three boards are:

- the Board for the selection and career of the prosecutors
- the Board for the performance evaluation of the prosecutors
- the Board for the discipline and ethics

The Boards are formed of 7 members, 5 of which are prosecutors elected by the General Assembly of the Prosecutors, 2 members are elected by the SCP among representatives of civil society by public competition. The decisions of the Boards can be challenged in front of the SCP. The authorities met by the monitoring team expressed concern that three boards complicate the procedure in an unjustified way and proposed that the two boards competent on the career of the prosecutors - the Board for the selection and career of the prosecutors and the Board for the performance evaluation of the prosecutors – merge in only one Board.

According to the law, the competition for the selection and career of the prosecutors are announced periodically on the website of the Council (Please see benchmark 6.2.1). The results of the competition are published on the website of the SCP.

Benchmark 6.5.2.

The Prosecutorial Council or another similar body is responsible for the performance evaluation of prosecutors that is conducted based on clear, objective criteria and transparent procedures

The SCP carries out the procedure of performance evaluation of the prosecutors through the Board for the performance evaluation of the prosecutors that functions under its auspices. The prosecutors are

submitted to a procedure of performance evaluation every 4 years. Exceptionally, they can be evaluated at their request when they intend to apply for a promotion or when the previous evaluation resulted in the grade “insufficient”.

The procedure and criteria of evaluation are provided by the Regulation adopted by SCP. The Board issues a decision on the evaluation granting the prosecutors a qualification grade. The evaluation criteria are provided by the Regulation adopted by the SCP such as: as the quality of the prosecutor’s activity, depending on the specific assignment of the prosecutor (investigation phase, trial phase), celerity of a case resolution, the observance of internal regulations, communication abilities and reputation and integrity. For the prosecutors with management roles and for those employed in the specialized prosecution offices, there are additional criteria for evaluation specific to the role.

The assessment of these criteria is based on: on the self-evaluation of the prosecutor, the studying by the Board of some case files randomly selected, statistical data, general information found in the registers of the PG office, the interview of the prosecutor. For some criteria, the information from the hierarchical chief prosecutor is also requested. For evaluating the leadership abilities of chief prosecutors, the Board also interviews prosecutors and other staff from the unit led by the evaluated chief prosecutor, 2-3 judges and requests the opinion of the PG.

All this information with regard to the procedure and criteria of performance evaluation, as well as the scoring results of the evaluation of prosecutors are made public via the website of SCP.

The interlocutors met by the monitoring team expressed concern that the existence of two SCP boards dealing with career issues – the Board for the selection and career of the prosecutors and the Board for the performance evaluation of the prosecutors – complicate the procedure in an unjustified way and proposed that the two boards be merged into one.

Also, some concerns have been expressed by the international organizations with regard to the fact that, in practice, the quantitative element prevails over the qualitative one in the evaluation of prosecutors and that evaluations are sometimes used for manipulation.

Although the legislation on performance evaluations of prosecutors seems to be in general in line with the international standards, having in mind the serious concern expressed by the civil society and international organizations regarding the lack of individual and internal independence of prosecutors, questions could arise as to whether the performance evaluation is carried out in such a way as to give a real image of the performance and quality of the members of the prosecution service, or if it is mostly a formal process.

Benchmark 6.5.3.

The proceedings and decisions of the Prosecutorial Council or other similar bodies, including their justification, are available for the public scrutiny

The website of the SCP is a good source of information for the prosecutors and the general public with regard to the main proceedings and decisions of both SCP and the two Boards set up under the aegis of the Council. The exception is the Disciplinary Board that is still delaying the publication of its decisions in disciplinary matters. The agendas of the SCP meetings, as well as the decisions taken in each meeting are promptly published on the website as well as the agendas and decisions of the Boards. The SCP meetings in which interviews are taking place, are broadcasted online.

Benchmark 6.5.4.

Members of the Prosecutorial Council or other similar bodies comply with the conflict of interest rules in their work

The Law on organization of the public prosecution service provides that the members of the SCP, with the exception of the ex officio members, cannot perform other remunerated functions during their mandate, except for the didactical, creative, scientific, sports or a civic activity. The same law provided for rules on recusal and abstention of a member to participate in a specific subject in the agenda if there are circumstances that exclude his/her participation with regard to that particular subject or that would raise doubts concerning his/her objectivity.

However, there are specific circumstances in the law when one member initiates a specific action – for instance, a member of the SCP can initiate a disciplinary case against a prosecutor, while later on, the prosecutor in question in front of the SCP can challenge the decision of the Disciplinary Board. In that case, the member who initiated the case should not participate, in order to avoid a conflict of interests. Usually, according to the authorities, the parties of the case request the recusal of the member. However, the law does not specifically provide for such exclusion. The situation is similar when a member of the SCP is personally concerned by a decision that the Council could take against him or her. It would be preferable to include such specific reasons for abstention and recusal in the law.

Although the law seems to be in general in line with the international standards, having in mind the serious concern expressed by the civil society and international organizations regarding the lack of individual and internal independence of prosecutors and the complex affiliations that impact the decisions taken in the justice sector, questions arise as to whether, in practice, the conflicts of interest could be always genuinely avoided in the decisions of the SCP.

Indicator 6.6. Assignment of cases among prosecutors is transparent and objective; prosecutors can challenge orders they receive

Assessment of compliance

Benchmark 6.6.1.

The assignment and re-assignment of cases among prosecutors is based on clear and transparent rules that are set in the legislation and ensure impartiality and autonomy from external and internal pressure

To assess the benchmark, the monitoring team needed to evaluate the rules for assignment and re-assignment of cases as they are stipulated in the law and applied in practice in order to determine:

- whether the legislation sets clear (unambiguous) rules that regulate issues of assignment or re-assignment of cases among prosecutors and if they are published;
- if such rules ensure impartiality and autonomy from pressure both external (outside of the prosecution service) and internal (within the prosecution service).

The Criminal Procedure Code (Art. 53-1 para 2g) stipulates that the hierarchically superior prosecutor ensures the distribution to the subordinated prosecutors of the criminal cases.

In addition, the Instruction on the role and responsibilities of the chief prosecutors of the subdivisions of the General Prosecutor's Office and the specialized and territorial prosecutor's offices in leading and carrying out the criminal investigation, adopted by the Order of the General Prosecutor 9/36 of 29 February 2016, stipulates the same responsibility of the chief prosecutor with the view to ensure a balance of the workload between prosecutors. The same Instruction mandates that when distributing criminal cases, the chief prosecutor must take into account:

- the requirements for independence and impartiality of prosecutors (lack of conflict of interest or grounds for abstention);
- the level of qualification of prosecutors;
- the specialization of prosecutors;
- the aspirations for professional development of prosecutors, including areas of their professional interest.

The reallocation of cases follows, according to the law, a very specific criteria and in limited situations. In particular, the Criminal Procedure Code (Art. 53-1 para 3) stipulates that the criminal cases assigned to a prosecutor may be withdrawn and transferred to another prosecutor in case of:

- the transfer, delegation, secondment, suspension or dismissal of the prosecutor, according to the law;
- the absence of the prosecutor, if there are objective causes that justify the urgency preventing his or her appearance;
- unjustifiable failure to take the necessary actions on the criminal case for more than 30 days;
- establishment, ex officio or upon complaint, of a serious violation of the rights of the persons participating in the criminal procedure or in the case of admitting irreparable oversights in the process of collecting evidence.

There is no legal possibility for the prosecutor to appeal against a decision of his or her chief prosecutor to allocate or reallocate a case and no such case in practice as well.

According to the authorities, in practice, the chief prosecutor assigns the cases to the subordinated prosecutors based on the criteria listed in the Instruction and he or she strives to do an equal distribution of cases. This is done for the pre-trial cases, and for cases brought before court. For the two specialized prosecutor's offices (Anti-Corruption Prosecutor's Office and Prosecutor's Office for Combating Organized Crime and Special Cases) where there are prosecutors that carry out the investigations and others that represent the cases in court – the Chief prosecutor of the Office assigns the cases. For other prosecutor's offices, across the country, usually the prosecutor assigned to carry out a criminal investigation or lead a criminal case, will also represent it before court.

The issue of implementing a random allocation of cases in the prosecution service is currently touched in the discussion regarding the new action plan on the Strategy of autonomy and integrity of justice. However, the prosecutors' opinion is that the same rules that go well for judges cannot be simply copy-pasted for prosecutors, and they expressed views that the current system works well in principle.

Beyond the general description that the chief prosecutors follow the law and the Instruction, the monitoring team did not have the possibility to check how the rules for allocation and reallocation of cases work in practice and could not conclude that they are objective on the ground and that these criteria when are applied in practice can really shield the prosecutors from undue external or internal pressure.

Another legal provision that may have an impact on the assignment and re-assignment of cases among prosecutors is the art. 270 para (5) CPC according to which the PG and his/her deputies may order, by motivated decree, for the criminal investigation falling within the competence of one prosecutor to be carried out by another prosecutor. This provision has been used by the PG, with justified reasons, in 2020 in order to remove 140 cases from APO/NAC and to assign them to other prosecution offices, at the request of these two bodies. The reason was to reduce a very high workload and backlog from the specialized anti-corruption law enforcement bodies.

However, although the removal of 140 from the APO in 2020 was justified in this case by objective reasons, the legal provision giving the PG such broad and un-circumstantial possibilities to remove a case from any prosecutor might endanger the independence of a corruption investigation.

In order to preserve the autonomy of the specialized anti-corruption investigation body and to protect it from potential abusive transferring of sensitive corruption cases, it is preferable that its competence is strictly provided by the law, and the possibilities to remove a corruption case from that body is provided only in exceptional circumstances, limitedly described in the law and with the consent of the anti-corruption body.

Benchmark 6.6.2.

Prosecutors routinely use the right to challenge orders from their superiors through a judicial or another independent procedure

The legal norms provide for the protection of the prosecutor against oral, illegal instruction that he or she might receive from the hierarchy, as indicated in art. 53 of the CPC and art. 13 of the Law on organization of the public prosecution service, as well as in the normative orders of the PG.

However, the monitoring team has been informed that in practice, the prosecutors never challenge the instructions of their hierarchy, i.e. there is no routine use of such a procedure by prosecutors, as required by the benchmark.

Moreover, the authorities state that, when the case reaches the court trial, the court could see whether any violation of the law occurred during the investigation and sanction it. This approach is questionable, since it would be very difficult for the court to see and even less to sanction a situation in which, for example, a chief prosecutor instructs orally the case prosecutor to ignore some investigative track and to pursue another.

The information received suggests that, in practice, the hierarchical links within the Prosecution service are so strong and the individual independence of the prosecutors is rather weak which makes it difficult for the lower prosecutors to challenge potential illegal or unethical instruction.

Indicator 6.7. Prosecutors are held accountable through impartial decision-making procedures that protect against arbitrariness

Assessment of compliance

Benchmark 6.7.1.

Clear grounds and procedures for the disciplinary liability and dismissal of prosecutors are stipulated in the law

The Law on organization of the public prosecution service includes Chapter VII on the disciplinary liability of prosecutors. It provides for a list of disciplinary misdemeanours, of the sanctions that can be applied, the deadlines for opening the disciplinary procedure and the procedure that is followed in such cases. The sanctions go from the less severe, the warning, up to the most severe, the dismissal from the position of prosecutor.

The procedure for the disciplinary actions against prosecutors is also described in detail in the law. In particular, any person may submit a notification to the Board for discipline and ethics, including the members of SCP; the notification is then verified by the Prosecutors' Inspection who drafts a report on the findings. When the Prosecutors' Inspection finds grounds for a disciplinary action, it submits a report to the Board. The Board carries out a public disciplinary procedure summoning the prosecutor in question, the Inspector who drafted the report and the person who submitted the notification.

The law also provides the prosecutor's rights in the procedure: to be informed with the content of the notification, to present explanations and evidence, to be assisted by a lawyer or a representative and to take part in the procedure.

The Board takes a decision with regard to the disciplinary liability and applies a sanction. The decisions of the Board for discipline and ethics can be challenged in front of the SCP, while the decisions of the SCP can be challenged in the administrative court.

Benchmark 6.7.2.

Application of disciplinary and dismissal procedures is perceived by the main stakeholders to be impartial

During the on-site visit, the issue of independence and impartiality of the Prosecutors' Inspectors has been discussed. The Prosecutors' Inspection office (PI) is a subdivision of the PG office and the inspectors are civil servants. The competition for inspectors is organized by the PG office. Prosecutors cannot be appointed as inspectors.

The representatives of the PI stated that the inspectors, although they are subject to the PG, do not receive any influence from the PG; the only role of the PG is to put a visa on the inspectors' reports; the assignment of cases is done within the PI. The PG does not take part in the decision process of the Board for discipline and ethics; he only participates as member of SCP when the decision of the Board is challenged.

However, the perception of the civil society is that the PI is not independent in its decisions. On the other hand, the law does not provide for a transparent selection and appointment procedure for the inspectors and that may prompt a lack of trust among the prosecutors and the public, in general.

Another issue raised by the PI is that the fact that the inspectors are not prosecutors creates practical problems in the carrying out of the verifications, since, as civil servants, they cannot look into the files, they should rely on the verifications requested and done by the chief prosecutors of the investigated prosecutor.

In the view of the monitoring team, providing that the inspectors on disciplinary matters regarding prosecutors are themselves prosecutors would bring more consistency to the disciplinary verifications, since prosecutor-inspectors could bring in their own knowledge on the functioning of the Prosecution service, on the carrying out of the criminal investigations and criminal trials and thus identifying more easily possible misconduct; moreover, they could thus have access to the files. Such a provision should necessarily be doubled by regulating a procedure for selecting the inspectors that is both transparent and based on merit and with providing the statutory and budgetary independence of the Prosecutor's Inspection from the PG in view of securing the objectivity of its investigations. For that purpose, placing the Prosecutors Inspection within the apparatus of the SCP would be a recommendable way to go.

Benchmark 6.7.3.

There are sufficient procedural guarantees of the due process for a prosecutor in the disciplinary proceedings, including the right to be heard and employ a defence, the right of judicial appeal

The law provides for a number of guarantees of the due process in the disciplinary proceedings regarding the prosecutors. In particular, the prosecutor whose conduct is verified in a disciplinary procedure has the following rights during the verification period: to be informed with the content of the notification, to present explanations and evidence, to be assisted by a lawyer or a representative and to take part in the procedure.

The prosecutor, assisted by a lawyer or a representative of his/her choice, is summoned in front of the Disciplinary Board and can be heard. The person who submitted the notification, as well as the verified prosecutor cannot participate as members in the Disciplinary Board. The decisions of the Board for discipline and ethics can be challenged in front of the SCP, while the decisions of the SCP can be challenged in the administrative court.

Benchmark 6.7.4.

The final decisions or case summaries regarding discipline of prosecutors are published online including their justification

The law requires that the decisions ruled by the Board of discipline and ethics are published on the website of the SCP. The authorities admitted "delays" in fulfilling this legal obligation, one of the problems they indicated being the need to anonymize the decisions in order to observe the requirements of the data protection norms. The SCP considered necessary to improve the mechanism for publishing its decisions and the decisions of its subordinate bodies in order to set a balance between the rules and principles regarding the processing of personal data and the free access to public information. Consequently, starting with July 2021, the SCP publishes decisions on disciplinary matters on its website, in the section dedicated

to the Board of discipline and ethics, anonymizing the names of all the persons involved, with the exception of the sanctioned prosecutor. Currently, two decisions are published.

Benchmark 6.7.5.

Proportionate and dissuasive disciplinary sanctions are routinely applied to prosecutors

According to the statistical data provided by the authorities, in 2020 the Board for discipline and ethics ruled 43 decisions in disciplinary proceedings, of which in 18 cases they applied sanctions. The sanctions applied have been the following: 11 warnings, 5 reprimands; 1 reducing the salary with 15% for 3 months and 1 dismissal. Non-governmental stakeholders were not aware or believed there was no analysis, including independent research or studies carried out in regards to proportionality and dissuasiveness of the disciplinary sanctions applied to prosecutors.

The monitoring team did not have the possibility to verify whether these sanctions have been proportionate and dissuasive for the offenses committed.

Benchmark 6.7.6.

All public allegations of corruption of prosecutors were thoroughly investigated with justified decisions taken and explained to the public

In relation with the allegations of corruption offenses committed by the prosecutors, the Prosecution office carried out criminal investigations and the results are the following:

- During the last 4 years (2018-2021) 19 new cases have been opened, 10 cases have been sent to trial, 10 cases have been closed.
- During the same period, the courts ruled decisions in first instance in 10 cases.

The representatives of the civil society and international community expressed concerns over some allegations and how they have been handled by the law enforcement and generally didn't think that all public allegations of corruption of prosecutors were thoroughly investigated with justified decisions taken and explained to the public, especially, when such allegations involved high-level persons.

It is of great concern that, among the prosecutors accused of corruption; there are also well-known and high-level prosecutors in the specialized prosecution offices. Having in mind the general climate marred by mistrust and allegations of politicization of the PG office, as well as allegations of political vendettas in the opening of some investigations, it is of outmost importance that the criteria of integrity and absence of inappropriate affiliations are given a more important role in the procedure of selection and appointment of prosecutors, including those in high level positions.

7 Integrity in Public Procurement

Moldova's procurement law covers most areas of economic activities, although there are important gaps, including procurement by SOEs among others. The law establishes competitive bidding as the default method of public procurement but the exceptions to this rule are not sufficiently narrow and specific, leaving room for abuse. There is an electronic procurement platform in place but only part of procurement is currently conducted through it. The mechanism for the review of complaints concerning public procurement is effective and is able to handle the cases it receives within a reasonable time frame.

No statistics are available regarding the sanctions imposed for the violations committed in public procurement. Persons and legal entities convicted for corruption are prohibited from participating in public procurement by the law but this provision appears to be poorly enforced in practice.

Publication of data on public procurement is piecemeal as only some types of information are collected and released centrally, and it is left to individual procuring bodies to publish others. The procurement agency's annual reports contain some but not all relevant types of data.

Indicator 7.1. Public procurement system is comprehensive and well-functioning

Background

Moldova has a comprehensive procurement legal framework. The country is a party to the WTO GPA (Agreement on Government Procurement since 2016 and has thus agreed to abiding by its provisions on policies, procedures and reporting. Moldova is also party to the Association Agreement with the European Union, signed in 2014. The Association Agreement inter alia covers public procurement, where Moldova essentially commits itself to successively aligning its legislation and practices with the EU's public procurement directives over an eight-year period.

The Public Procurement Law (No. 131 of July 2015) entered into force on 01.05.2016. It covers the procurement of goods, works and services (including non-consulting and consulting services) by contracting authorities at central, sub-central and local level, with certain exceptions specified in the law. Since its adoption, the law has been amended through numerous amendments, following the country's commitments in the context of the Association Agreement between the EU and Moldova. In addition to the law, there are a number of regulations adopted by Government Decrees or Ministry of Finance Orders meant to guide contracting authorities throughout procurement process.

Assessment of compliance

Benchmark 7.1.1.

Primary public procurement legislation covers all areas of economic activities concerning public interests including state owned enterprises, utilities and natural monopolies, as well as the non-classified area of the defence sector

The Law on Public Procurement (Article 1), public procurement is defined as procurement of goods, works or services for the needs of one or several procuring bodies. A procuring body is defined as a “public authority body, a legal entity of public law, or a group of such bodies and entities.” According to Article 5 of the law, the defence, law enforcement, and security bodies are required to apply the provisions of the law except the cases that are exempt for this requirement (see Benchmark 7.1.2).

SOEs are not subject to the law, not even those in the utilities sector. Until 2020, SOEs were required to have their own internal procurement regulations, to be developed by the institutions themselves, but the Public Procurement Authorities or any other relevant institutions did not assess these for quality and relevance. A new regulation on procurement by SOEs was adopted by the Government in June 2020 and came into force in July 2020. It reflects basic principles of good public procurement but does not cater for the quite varying market positions of SOEs; those operating autonomously in a competitive market and subject to bankruptcy may not necessarily need to be obliged to follow specific procedures typical for public sector entities. However, its application will take some time and municipal enterprises are only recommended, not obliged, to apply it. The utilities sector has become regulated in line with the EU’s Utilities Directive, except that the new law entered into force only in June 2021.

A number of other areas are excluded from the primary law (under Article 4) and not all of these exceptions appear to be reasonable. For example, the provisions of the law do not apply to the contracts awarded by procuring bodies in the fields of energy, water resources, transport, and postal services (although these are regulated by a special law adopted in 2020); contracts concerning the purchase of land and buildings; contracts concerning the provision or use of communication networks or provision of electronic communication services to the public; contracts concerning procurement for organizing and conducting elections. Some of those exempted areas may be covered in future through recent legislative changes mentioned above.

The reported overall volume of public procurement in 2020 covered 12,416 contracts in the amount of MDL 9,041 million (USD 504 million). This represents about 4.2 per cent of the country GDP. The average level of the coverage in similar countries and OECD country average is about three times larger. It can be concluded that primary public procurement legislation, as a whole, does not seem to have yet a comprehensive coverage in respect of the utilities, which have a direct impact onto the public through tariffs.

According to the Authorities, in the part related to sectoral procurement contractors in the field of energy, water resources, transport and postal services, the Law No.74 (21 May 2020) on procurement in the energy, water, transport and postal services sectors covers this spectrum of previous exceptions, and the contracting authorities/entities have to apply and incorporate the provisions of this Law. As for the exception provided in Article 4 of the Public Procurement Law, the provisions of this law do not apply to contracts concluded by the Public Services Agency that have as object the procurement (contracting) of goods, services or works in order to create multifunctional centres. The founder of the Agency approves the regulation on the manner of concluding the respective contracts. It has to be mentioned that this

exception has been repealed together with the amendments made to the Public Procurement Law (no. 169 of 26 July 2018, which is in force since 01 October 2018).

In 2020, the Public Procurement Agency started the process of liberalizing the energy market in the field of public procurement. In 2020, the contracting authorities concluded public procurement contracts following the procurement procedures and with the economic operators that provide electricity supply services at unregulated tariffs.

Benchmark 7.1.2.

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

The law (Article 46) lists the procedures which the procuring entities can use for procurement:

- Open tender
- Limited tender – a procedure that involves a stage of preliminary selection prior to the bidding.
- Competitive dialogue – a procedure in which any interested suppliers can respond to a public call by a procuring entity which then selects a number of applicants and engages in a separate dialogue which each applicant, before asking all of them to submit their final offers.
- Negotiating procedures – which can be conducted with or without a public call for applications.
- Request for price offers – a procedure which can be used for procuring goods and services worth no more than 400,000 lei and work worth no more than 1,500,000 lei. If the value of the goods and services to be procured is more than 150,000 lei (or 200,000 lei in case of work), the procuring entity is to make a public call for offers.
- Competition for solutions – a procedure which is used mainly for procuring architectural plans or projects and involves a public call for applications.
- Procurement for social and other special services
- Innovative partnership – procurement of development of innovative goods and services that are not currently available in the market.

The law also provides for the use of the following “special” procedures for awarding contracts exclusively in the cases established by the law:

- **Framework agreement** – a procedure where one or more procuring entities conclude an agreement with one or more suppliers based on which contracts will subsequently be awarded. Framework agreements must, by default, be concluded through the procedures of open tender or limited tender.
- **Dynamic procurement system** – a fully electronic procedure which is used to meet short-term needs of procuring entities concerning the goods whose “characteristics are commonly known in the market.” The process is public and open to any interested suppliers.
- **Electronic trading** – interactive reverse bidding which can be used as the final stage of the procedures of open bidding, limited bidding, negotiations, or request for price offers.
- **Electronic catalogues** – a procedure where offers are to be submitted in the form of electronic catalogues.

The law 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. Overall, almost all of the above procedures are competitive, being open to all interested parties.

Article 54 provides several reasons allowing use of the negotiated procedure without prior publication of a contract notice (de facto allowing direct contracting arrangements). The statistical data of 2020 suggest that the direct contracts arrangements are indeed limited and represented about 4 per cent of the reported volume of public procurement in respect of both the value and number of contracts.

At the same time, Article 4 provides an extensive list of exemptions. Many of these are focused on exclusive rights or capabilities, while several of them provide a very broad basis for the use of the direct contracting (through exemptions) instead of the competitive procedures for acquisition of goods, works and services.

Without clear definitions of exceptions from competitive procedures or application of the Public Procurement Law as a whole, they cannot be classified as limited, given the volume of unaccounted public procurement in the country.

This above concern was confirmed by CSOs, as they believe that often exemptions are used to allow for application of non-competitive procurement practices.

According to the Authorities, the contracting authorities use mainly open public procurement procedures, to the detriment of negotiated procedures without prior publication of a contract notice allowing economic operators to submit as many tenders as possible. This results in a higher transparency of the procedure and an efficient use of public money.

Benchmark 7.1.3.

Public procurement procedures are open to foreign legal or natural persons

According to Article 15 of the Public Procurement Law, both resident and non-resident economic operator, natural or legal person of public or private law or association of such persons to participate in public procurement procedures.

On the other hand, in practice, because of the particularities of the applicable legislation, non-resident economic operators cannot take part in tenders within the public procurement procedures if they do not have legal representatives on the territory of the Republic of Moldova.

These issues arise from the provisions of Article 33 of the Public Procurement Law, which mentions the obligation to apply an electronic signature on electronic offers, but also from the provisions of Law 91/2014 on electronic signature and electronic documents, according to which the electronic signature issued by authorities from other states than Moldova is not recognized, as there are currently no agreements in this regard between Moldova and other states. At the same time, the issuance of the electronic signature is conditioned by the identification of the holder (name, surname, identification number of the natural person), which implies the presentation of the identity card of Moldova, residence permit, or other document containing a personal identification code.

Available data is not sufficient to determine to what extent this restriction affects public procurement. However, CSOs provided examples of foreign companies tendering in and winning contracts in Moldova.

Benchmark 7.1.4.

Electronic procurement system is functional and encompasses all procurement processes

Since 2018, Moldova has had an e-procurement system -- MTender. The e-procurement platform (<http://mtender.gov.md>) provides the interface for interaction between contracting authorities and economic operators during the electronic cycle of public procurement.

Although an electronic procurement system is in place, it can currently only be used only for four of the multiple types of procurement procedures provided for by the law: open tender, request for price offers, negotiation procedure without prior publication of a notice of participation, and low-value contracts. Moreover, the electronic system is not used to cover all stages of procurement cycle, especially planning and contract administration.

According to the Authorities, following the technical maintenance performed on the SIA RSAP platform (Mtender) in 2020 there is a possibility to register, use and start the negotiation procedure without prior publication of a notice of participation, as well as procurement of low value contracts.

Benchmark 7.1.5.

Direct (single-source) contracting represents less than 10% of the total procurement value of all public sector contracts

According to the government, the total value of 12,461 public procurement contracts registered by the Public Procurement Authorities in 2020 was MDL 9,040,644,438, included 537 contracts for MDL 398,644,368 concluded through direct contracting.

Direct contracting thus accounted for 4.6% of the total value.

It should be noted that the data do not include small value procurement (up to MDL 200,000 for goods and services and up to MDL 250,000 for works).

Benchmark 7.1.6.

There is a wide perception among the main stakeholders that public procurement is fair and transparent

The average level of participation in the competitive procurement processes is very high (4.7 tenderers per a procurement process), which is very commendable and suggest that the procurement system is attractive the market players.

However, one quarter to half of the competitive processes (depending on the procedure used) attracted no competition (no or only one proposal was submitted).

Although limited, the available information points to problems in terms of public trust in the process. According to IDIS, there is a perception among stakeholders that public procurement in Moldova

characterized by limited transparency, lack of fairness, integrity and efficiency. According to an IDIS survey of civil society representatives, 53.4% of respondents consider level of integrity in public procurement is low or extremely low. IDIS highlighted poor performance of procuring entities in terms of addressing violations in the procurement process, as well as a large number of complaints filed with the relevant authorities, as further signs of lack of fairness in the process.

It should be noted that the relations between public institutions on the one hand, and the business community on the other, regular contacts as well as formal and informal consultations are organised by business associations such as the Chamber of Commerce and Industry and the Employers' Federation, as well as by their member organisations and other industry associations and chambers. It was noted that there has been a rather weak response to private sector suggestions for constructive dialogue in certain sectors where economic operators see problems in respect of public procurement practices.

According to the Authorities, following the Order of the Minister of Finance No. 105 (12 August 2020) on the approval of the Instruction on the manner, conditions and procedure for organizing and conducting market consultations in preparation for public procurement, contracting authorities shall have a sufficient basis to build an effective and pragmatic dialogue with economic operators to improve the Award Documentation.

Indicator 7.2. Procurement complaints are addressed

Background

The National Agency for the Settlement of Complaints (NASC) is the specialised review body in charge of the first review of complaints against public procurement-related decisions and actions or inactions of contracting authorities during preparation and award of public contracts.

There is no requirement to first lodge a formal complaint with the contracting authority.

The NASC's decisions are made only on the basis of the evidence submitted by the parties. The Administrative Code provides that the competent public authorities and courts shall ex officio examine the facts independently, that they themselves determine the type and depth of review needed, and that they are not bound by or limited to either the submissions by the parties or their requests for evidence.

The NASC has to resolve the complaint on its merits within 20 working days from the date of receipt of the complaint. In duly justified cases, the time limit for resolving the complaint may be extended once by 10 days.

Assessment of compliance

Benchmark 7.2.1.

Procurement complaints review body routinely reviews procurement complaints within a reasonable time frame

The National Agency for Solving Complaints (NASC) is the designated independent body for reviewing procurement-related complaints under Article 80 of the law. All participants of public procurement have the right to file complaints with the NASC and the body must adopt a decision on a complaint within 20 working

days of receiving it, although this deadline can be extended by another 10 days under exceptional circumstances (Article 85).

According to the authorities, the NASC received 1,282 complaints in 2020 and the average time of reviewing the complaints was 17 working days.

Benchmark 7.2.2.

Procurement complaints review body decisions repealed by courts or other appeal body comprise less than 10% of all cases that have been referred to them

According to the authorities, 44 decisions adopted by NASC in 2020 were challenged in court and only two of them were repealed by courts.

Benchmark 7.2.3.

There is a wide perception among the main stakeholders that the procurement complaints review body functions in an independent and impartial manner without undue interference in its work

According to IDIS, a nongovernmental stakeholder, despite the fact that some commercial entities consider the NASC to have been biased in some cases, there is no evidence of the body's lack of independence or impartiality and most of the relevant stakeholders generally view the body positively.

Despite the efforts of the NASC to ensure transparency and harmonisation of interpretation and application of the public procurement law and regulations, there are rather limited possibilities to search for and analyse its decisions.

Indicator 7.3. Dissuasive and proportionate sanctions are enforced for procurement related violations

Background

The National Anti-Corruption Centre carries out thorough analyses, having at its disposal a series of tools provided by law to identify corruption risks, including in public procurement. However, the results of this analytical work are not necessarily observed in the direct fight against corruption and fraud in public procurement.

The annual activity reports of the competent anti-corruption institutions do not include statistics on the number of complaints of cases of fraud, corruption and other prohibited practices in public procurement, public entities and subjects involved in investigations and criminal cases related to public procurement, including the results of criminal proceedings on such cases.

With respect to reform efforts aimed at combatting corruption in public procurement, a Sectoral Anti-Corruption Action Plan in public procurement for the years 2018 – 2020 was approved by Government Decree No. 370 of 21 April 2018. It was developed and approved under the National Integrity and Anti-

Corruption Strategy 2017 – 2020, where public procurement was identified, among others, as one of the sectors most vulnerable to corruption.

Some economic operators in the country and their business associations are in the process of implementing integrity standards within companies.

The Public Procurement Law includes provisions preventing contract awards in case of identified conflict of interests (Article 74) or corruption offences (Article 40).

On the background of multiple concerns expressed by the Authorities, CSOs and mass media in respect of collusion and corruption in public procurement, there are no reported cases of sanctions imposed towards the public officials for violations of conflict of interest rules or enforcement of corruption offences in the public procurement sector with final convictions. That may suggest either complete absence of violations of conflict of interest or proven corruption offences (which is highly unlikely given the number of the contracts placed -- 12,416), or rather inefficient monitoring and reaction to such violations. The latter possibility seems to be supported by the recent statement (10 August 2021) by the Prime Minister of the country calling for more effective control over the procurement process.

Assessment of compliance

Benchmark 7.3.1. – 7.3.2.

BENCHMARK	Moldova 2020	
	Total	Per 10 000 of contracts
7.3.1. Track record of sanctions imposed public officials for violations of COI rules in public procurement	0	0
7.3.2. Track record of enforcement of corruption offences in the public procurement sector with final convictions	0	0

Benchmark 7.3.3.

All legal and natural persons convicted for corruption offences were debarred from the award of public sector contracts

According to Article 19 of the primary procurement law, a procuring entity is required to exclude from the procurement process any candidates that have been convicted, in the last five years, for certain types of crimes, including corruption. This requirement also applies to the cases where a person convicted for corruption holds a position in the management or a governing body of a bidding entity.

However, according to Moldova, this is not done in practice as there is no database of the legal and natural persons convicted for corruption, so it is difficult for the procuring bodies to identify them.

Indicator 7.4. Public procurement is transparent with independent oversight

Background

The legal and institutional framework in Moldova include features intended to secure integrity in public procurement as well as in public administration in general. Laws and regulations are in place to promote public consultations, enable civil society participation and provide access to information and facilitate monitoring. Corresponding institutions are also in place, whilst the civil society participation is active safeguarding against inefficient and ineffective use of public resources and helping to make public procurement more competitive and fair.

Assessment of compliance

Benchmark 7.4.1.

Key procurement data are published and regularly updated on-line on a central procurement portal free of charge in open data format, including at least the following:

- procurement plans;
- complete procurement documents;
- outcome of the tender evaluation, the contract award decision and the final contract price;
- appeals and the results of their review;
- Information on contract implementation.

The publication of procurement data is scattered across the procuring entities rather than being delivered through the central procurement portal.

Tender documents and the information of the procurement undertaken under MTender system (which currently covers only two procedures) are timely and fully available via the central procurement portal (<https://mtender.gov.md>). The decisions to award contracts and the actual contracts are also published via the portal (www.tender.gov.md), according to the authorities, although CSOs have expressed doubts about this.

According to the Authorities, the information on the implementation of contracts is not published centrally but is included in the regular reports by the procurement working groups, which every procuring entity is required to establish.

The information about appeals and the results of their review is published on the website of the NASC.

The data on the e-procurement portal are not published in a machine-readable format.

Benchmark 7.4.2.

Beneficial ownership of all participants in a procurement process is revealed in procurement

The Public Procurement Law does not require submission of the documents regarding the ownership of the economic participants. Accordingly, as confirmed by IDIS, the identity of the beneficial owners of the participants in a procurement process is not currently revealed.

However, the current practice provides for the use of the self-declaration form modelled on the European Single Procurement Document, when the MTender system is used. This form requires tender participants to provide data on beneficial ownership. However, as noted earlier, the MTender system does not cover all public procurement in Moldova. Also, even where the information of beneficiary ownership is disclosed, there is no effective mechanism for its verification or for factoring the information received into the decision-making process.

Benchmark 7.4.3.

Detailed statistics on public procurement is regularly published online, including key public procurement indicators

The statistics are published as part of the Public Procurement Agency's quarterly and annual reports. Since these reports are only available in Romanian, the monitoring team cannot assess how detailed the included information is. According to IDIS, the data is not disaggregated and the information on small-value procurement is not included. Some other important types of information are also not provided, including information on public procurement as a share of government expenditure, domestic and foreign procurement, the number of terminated contracts, essential data on procurement concluded outside the public procurement legislation, efficiency of public procurement system indicators, openness of public procurement system to SME indicators, etc.

Business Integrity

Moldova's legal framework on business integrity contains significant gaps and there are corresponding problems in practice. There is no general Code of Corporate Governance, although the country's financial regulator has adopted one which is mandatory for the listed companies that have the status of "publicly significant entities." There is a lack of evidence of appropriate monitoring by the relevant regulators of the performance of company boards in the area of corruption risk management

Companies are required to disclose their beneficial owners when they register in Moldova, although it is not clear whether this provision is enforced effectively in practice. While previously only the relevant public bodies had access to the information about the beneficial owners of companies, the same information was also made available to the general public through a very recent legislative amendment

The government has not yet implemented any incentives designed to prompt companies to develop internal anti-corruption mechanisms and ensure integrity in their operations. There is also no business ombudsman or a similar office in Moldova.

The law governing the activities of Moldova's state-owned enterprises establishes some requirements concerning the appointment of boards and management, as well as the responsibilities of the boards in terms of oversight and the transparency of the SOEs. However, these are not implemented effectively in the country's largest SOEs.

Indicator 8.1. Boards of directors of listed companies/publicly traded companies are responsible for oversight of the management of corruption risks

Background

Moldova has no sector-wide mandatory Corporate Governance Code. The country's Integrity Law contains a section on integrity in the private sector which is defined as the "capability of the commercial entities to interact with public authorities, and among themselves legally, transparently, objectively and based on free competition." The law covers a number of areas, including evolving door appointments, business ethics, internal controls, transparency of ownership and transparency of dealings with the public sector.

Assessment of compliance

Benchmark 8.1.1.

Corporate Governance Code establishes the responsibility of boards of directors of listed companies to oversee the management of corruption risks as a part of integrated risk management

Moldova's National Commission for Financial Markets (NCFM) has adopted a Corporate Governance Code for the companies operating in financial markets. The Code contains provisions on the responsibilities of the boards of directors in terms of establishing of internal anti-corruption procedures and overseeing their implementation. Compliance with the Code is mandatory for about 40 joint-stock companies, which have the status of "publicly significant entities" under Moldova's law.

Benchmark 8.1.2.

Securities regulators or other relevant authorities regularly monitor how boards of directors of listed companies oversee the management of corruption risks

According to the government, the National Bank conducts annual or bi-annual inspections in banks but these inspections do not focus on the management of corruption risks. Neither does the National Bank have experts specialized in verifying the management of corruption risks. No information has been provided regarding any procedures in place for other types of listed companies.

Indicator 8.2. Public disclosure of beneficial ownership of all companies registered in the country is ensured

Assessment of compliance

Benchmark 8.2.1.

Information about beneficial owners is registered and publicly disclosed online in a central register

According to Moldova's Integrity Law (Article 41), information regarding the "shareholders, founders, administrative officers, and beneficial owners" of "commercial organizations" is "of public importance" and those in possession of this information "must ensure online access to them." Commercial organizations whose founders or shareholders include legal entities registered in "jurisdictions which do not adhere to the international standards of transparency" regarding company ownership can only be registered in Moldova if they disclose their beneficial ownership information in writing. The Law no.308/2017 on Preventing and Combating Money Laundering and Financing of Terrorism (AML law, Article 14 par. (3)) also prohibits registration of legal entities and individual entrepreneurs that fail to present to the registering authorities information about their beneficial owners. Until very recently, this information was not public and was only made available to the relevant state bodies responsible for oversight. However, the

amendments to the Law no. 220/2007, performed through Law no.150/2021 (in force as of 05 December 2021) introduced the obligation to publish the information about the beneficial owners of legal entities.

Benchmark 8.2.2.

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

As noted under benchmark 8.2.1, the legislative provisions on publication of beneficial ownership information were introduced in Moldova very recently (after the completion of the pilot assessment by the monitoring team), so the monitoring team cannot assess their implementation at this stage. According to Moldova, the information from the Registry on legal entities is public, free of charge and there is the possibility for automatic search.

Benchmark 8.2.3.

Beneficial ownership information is verified routinely by public authorities

The AML law (Article 14) requires the authorities responsible for the registration of legal entities and individual entrepreneurs to collect, verify, and update the information about beneficial owners. In 2018, the Public Service Agency adopted an instruction on collecting, checking and recording data on the actual beneficiaries in the State Register of Legal Persons and Individual Entrepreneurs. Consequently, according to Moldova, the authorities are currently collecting and verifying information on beneficial ownership and it is impossible to register a legal entity (of all types) in Moldova without providing this information. A total of 31,778 legal entities provided information about their beneficial owners between August 2018 and September 2021.

According to the latest amendments in the legislation, the registration authority is obliged to verify the information on beneficial ownership. Moldova's progress in introducing mandatory disclosure of beneficial ownership and collecting the relevant information is commendable. However, further evidence is required to demonstrate that the process is not formalistic and that the collected information is actually being verified.

Benchmark 8.2.4.

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

Moldova's AML law requires the "reporting entities" (which including banks, various financial and non-financial businesses, and professions such as lawyers, notaries, auditors, and accountants) to take a number of "precautionary measures" vis-à-vis their clients. These measures include "identifying the beneficial owner and taking reasonable measures commensurate with the risk their verify their identity, so

that the reporting entity can ascertain that it knows who the beneficial owner is, including taking reasonable measures to understand the client’s structure of responsibility and structure of control.”

If the reporting entities are unable to take the above measures, they are required to refrain from establishing business relations with the client in question and consider the possibility of informing the relevant authorities about a suspicious activity. They are also required to keep track of all the measures taken in order to establish the beneficial owners in every single case and to provide this information to the relevant authorities, if needed.

Benchmark 8.2.5.

Dissuasive administrative and criminal sanctions are applied routinely for violations of regulations on registration and disclosure of beneficial ownership

Moldova’s legislation establishes sanctions for the violation of rules on the disclosure of beneficial ownership. According to Article 14 (4) of the AML Law, upon the detection of non-authenticity or non-compliance of the information about the beneficial owner of the legal entities or of the individual entrepreneurs after the state registration, provisional measures shall be applied in respect of their assets in accordance with the provisions of Article 33. These measures (under Article 33) include suspension of suspicious activities or transactions, as well as freezing of suspicious assets until the identification of the beneficial owner.

However, no information has been provided to the monitoring team about the application of the relevant sanctions in practice.

Indicator 8.3. There are incentives for all types of companies to improve integrity of their operations

Assessment of compliance

Benchmark 8.3.1.

Government has implemented incentives for companies to improve the integrity of and prevent corruption in their operations.

There are no special incentives in place in Moldova for companies to improve their integrity and prevent corruption. The only prototype of such incentives is the requirements for obtaining the status of the Authorized Economic Operator - AEO. However, in the Customs Code of the Moldova Republic, there are no requirements related to business integrity and corruption prevention among the conditions for granting AEO status.

The Ministry of Economy has proposed a system for identifying so-called “five-star” enterprises which would be subject to less scrutiny from the relevant authorities, and the proposed criteria for granting this status would include internal anti-corruption measures. However, it is the understanding of the monitoring team that this proposal is yet to be implemented.

Indicator 8.4. There are mechanisms to address concerns of all companies related to corruption and bribe solicitation by public officials

Assessment of compliance

Benchmark 8.4.1.

There is a designated institution responsible for receiving complaints from companies about bribe solicitation by public officials and related corruption-related matters, providing protection or helping businesses to resolve legitimate concerns

Moldova does not have a business ombudsman or similar institution, and there is no designated body for receiving complaints from business entities regarding bribe solicitation and other related issues. The law enforcement bodies and the NAC perform this role. According to this benchmark, reporting channels in law-enforcement and anti-corruption bodies or administrative courts are not counted as designated institutions for receiving company complaints.

Benchmark 8.4.2.

There is a wide perception among the main stakeholders that the institution operates independently and impartially without political or other undue interference in its work

Moldova does not have a designated institution.

Benchmark 8.4.3.

This institution has powers and resources that are sufficient to review individual complaints, to provide protection and help businesses resolve their concerns in another legal way

Moldova does not have a designated institution.

Benchmark 8.4.4.

This or another institution analyses systemic problems and prepares policy recommendations to the government

Moldova does not have a designated institution, and no information has been made available to the monitoring team regarding such analysis and recommendations prepared by another institution.

Benchmark 8.4.5.

At least half of policy recommendations regarding systemic problems related to business concerns about corruption, bribe solicitation and related matters have been implemented or otherwise properly addressed by the government

No information has been made available to the monitoring team on this subject.

Indicator 8.5. State fulfils its role of an active and informed owner of SOEs and ensures the integrity of their governance structure and operations

Background

The Law on State and Municipal Enterprises (SOE law) is the primary legal framework governing the establishment and operation of SOEs in Moldova. The government identified the following entities as “10 largest SOEs” in the country:

- Join-stock company "Northern Distribution Electrical Networks"
- Join-stock company "Termoelectrica"
- Join-stock company "MOLDTELECOM"
- State enterprise “Moldovan Railway”
- State enterprise “State Road Administration”
- State enterprise “Moldovan Post Office”
- Joint-stock company "Metalferos"
- Join-stock company "FRANZELUTA"
- Join-stock company “Cricova winery”
- State enterprise “Chisinau Glass Factory”

Each SOE from the list must meet in practice each of the requirements of the benchmarks of this Indicator for compliance.

Assessment of compliance

Benchmark 8.5.1.

Government ensures that supervisory boards in at least 10 largest SOEs are established through a merit-based and transparent nomination process, including a minimum one-third of independent members

Moldova’s SOE law does not contain any provisions regarding merit-based and transparent nomination process or the share of independent members in SOE boards. Instead, it simply says (in Article 8) that “any physical person who meets the minimal requirements” can be appointed to an SOE board by the entity that has established it. According to Moldova, the Public Property Agency (PPA) has the lead role in the selection and appointment of the board members in Moldova’s SOEs: The board members are either appointed by the PPA general director via an order or (in the case of join-stock companies) elected by the general meetings of the shareholders based on the PPA’s nominations. There is no established

mechanism or methodology for the selection of candidates and the process is not sufficiently transparent. No information is available regarding the share of independent members in the SOE boards and no evidence was provided as to how this process has been implemented in the 10 largest SOEs.

Benchmark 8.5.2.

Boards of at least 10 largest SOEs established integrated risk management systems that include internal controls, ethics and compliance measures that address SOE integrity and prevention of corruption

No information has been provided for assessment under this benchmark.

Benchmark 8.5.3.

CEOs of at least 10 largest SOEs are appointed through a merit-based and transparent nomination process and report to the boards

The SOE law requires SOE boards to select their CEOs (managers) through a competition (Article 8, Paragraph 7). It also requires CEOs to report to the SOE boards on financial and other issues concerning the enterprise's operation (Article 9). According to Moldova, further regulations on selection commissions have been drafted but have not been adopted yet. Also, no information has been provided as to how this process has been implemented in practice in the 10 largest SOEs.

Benchmark 8.5.4.

At least 10 largest SOEs conduct annual external audits in line with international accounting standards

The law (Article 11) requires Moldova's SOEs to conduct annual external audit. According to the government, SOEs conduct annual external audits in practice too, the auditing entity being selected according to a procedure established through a government decree. However, no evidence has been provided that annual external audits have been conducted in all of the 10 largest SOEs.

Benchmark 8.5.5.

The boards of 10 largest SOEs routinely deliberate about and decide on the findings of internal audit committees and external audit reports regarding integrity issues

The law (Article 8, Paragraph 7) requires SOE boards to review the findings of audit and approve action plans for the resolution of the issues identified by audit. The law (Article 10) also requires SOEs to set up internal audit commissions. However, according to Moldova, this provision has not been fully implemented yet. Also, no evidence has been provided regarding the relevant practices in the 10 largest SOEs.

Benchmark 8.5.6.

10 largest SOEs disclose at least:

- company objectives and activities carried out in the public interest;
- financial and operating results;
- material transactions with other entities;
- remuneration of board members and key executives

The SOE law contains a separate chapter on transparency. Article 18 of the law requires SOEs to publish on their websites different types of information, including their charters, internal regulations, annual reports, and audit reports. Annual reports must include information about the remuneration of board members and top executives, as well as financial and operating results.

No information has been provided regarding the compliance of the 10 largest SOEs with these requirements. The monitoring team was unable to find the websites of two of the 10 largest SOEs (Joint-stock company "Northern Distribution Electrical Networks" and State enterprise "State Road Administration"). The monitoring team reviewed the websites of the other eight SOEs and was unable to confirm that they contain all relevant types of information: While most (but not all) of them have published information about company objectives and financial reports, many appeared to not have published financial and operating results and information material transactions with other entities. The monitoring team was unable to find information about the remuneration of board members and key executives of any of the eight websites.

According to Moldova, the Ministry of Economy elaborated and presented to the Government a draft Government Decision approving the Regulation on the selection and appointment of members of the Board of directors and the audit committees of State-owned Enterprises and their remuneration conditions (single number 276 / MEI / 2019). Following the examination, the project was returned to the Ministry and it is currently ready to be adopted. In order to streamline the process of administration of joint-stock companies, the Ministry has developed a draft Government decision on state representation in companies with public or public-private capital.

9 Enforcement of corruption offences

Enforcement of corruption offences could not be properly assessed in Moldova due to the lack of information on final convictions for reviewed categories of offences. While sanctions prescribed in the law appear to be proportionate and dissuasive, there are problems in terms of their application in practice. The time limits for conducting investigation are sufficient for effective enforcement, and the statute of limitations period is adequately lengthy, however, it is not suspended when the person has immunity. Immunities may impede the effective investigation and prosecution of corruption crimes committed by persons with immunity, in particular, the MPs. The statistics is collected but in a dispersed manner and does not seem to be properly analysed or accessible in full.

Indicator 9.1. Liability for corruption offences is effectively enforced

Background

Moldovan authorities provided statistical data on convictions in the first instance for the offences reviewed in the framework of this monitoring. No information in regards to convictions that became final (i.e. entered into legal force) in 2020 was made available to the monitoring team before or after the on-site visit.

In 2019-2020 the Supreme Court of Justice took irrevocable sentencing decisions (or upheld the decisions of lower courts) in 71 criminal cases against 85 persons accused of committing the crimes provided by art. 324, 325, 326, 333 of the Criminal Code of the Republic of Moldova (the CC).

Imprisonment was applied to seven convicted persons, the average term of imprisonment per person being three years, five months and 14 days. Eight persons received the sentence of imprisonment with a fine (in total amount of 646.000 MDL). The average term of imprisonment per person was four years, with an average fine in the amount of 80.750 MDL. For 10 individuals, the prison terms were suspended and they were placed on probation for a period of one to five years. Similarly, 26 persons convicted to imprisonment with the application of a fine (in the total amount of 2.947.000 MDL) were handed suspended sentences. A fine was the sanction applied most frequently, having been used against 34 persons, and the total amount of these fines was 2.721.250 MDL. Also, 22 persons were deprived of the right to hold certain positions or to exercise a certain activity, including 14 persons convicted for passive corruption (in all cases -- for bribery). In seven cases, criminal proceedings were terminated for various reasons: Four persons were released from criminal liability in connection with the expiration of the limitation period of prosecution, the provisions of a law on amnesty were applied to one person, one case was found to be a misdemeanour, and one case was terminated because other circumstances were established which precluded criminal prosecution.

The monitoring team notes the limited nature of available statistics and urges Moldova to collect the relevant data for future rounds of assessment.

Benchmark 9.1.1. – 9.1.8.

BENCHMARK	Moldova 2020	
	Total number of convictions	Per 1 million of population
9.1.1. Track record of enforcement of active and passive bribery offences in the public sector with final convictions	0	0
9.1.2. Track record of enforcement of active and passive bribery offences in the private sector with final convictions	0	0
9.1.3. Track record of enforcement of offence of offering or promising of a bribe, bribe solicitation or acceptance of offer/promise of a bribe with final convictions	0	0
9.1.4. Track record of enforcement of bribery offences with intangible and non-pecuniary undue advantage with final convictions	0	0
9.1.5. Track record of enforcement of trading influence offence with final convictions	0	0
9.1.6. Track record of enforcement of illicit enrichment offence with final convictions or a track record of cases of non-criminal confiscation of unexplained wealth	0	0
9.1.7. Track record of enforcement of foreign bribery offence with final convictions	0	0
9.1.8. Track record of enforcement of money laundering sanctioned independently of the predicate public sector corruption offence with final convictions	0	0
<p>Comments: Population of Moldova was 2.6 million in 2020 (source: https://data.worldbank.org/country/moldova)</p>		

Based on information provided by Moldovan authorities for first instance, there is practice of enforcement of active and passive bribery offences in the public sector and the private sector, trading of influence, and money laundering sanctioned independently of the predicate public sector corruption offence. There have been cases of enforcement of offering or promising of a bribe, bribe solicitation or acceptance of offer/promise of a bribe at the level of the first instance courts.

Indicator 9.2. Proportionate and dissuasive sanctions for corruption are applied in practice

Benchmark 9.2.1.

Proportionate and dissuasive sanctions are routinely applied for corruption crimes

Sanctions for corruption crimes in public sector applied to physical persons in Moldova (sanctions imposed on legal persons are reviewed under PA 10) appear to be proportionate and dissuasive in theory. They compare to the average level of sanctions in the IAP countries which were deemed acceptable. They are differentiated for offences of the similar type by including different elements (e.g., depending on the amount of the undue advantage or category of public official). They are comparable to the level of sanctions for other economic crimes.

Passive bribery in public sector (Criminal Code Art. 324) is punishable by a fine ranging from 4,000 to 6,000 conventional units and imprisonment for between 3 and 7 years, with disqualification from holding office or from engaging in certain activities for a period of between 5 and 10 years. If there are aggravating circumstances, the sentence increases to between 5 and 10 years' imprisonment, and 7 to 15 years for higher level of gravity. The fines and disqualification levels also adequately increase.

Active bribery in public sector (Criminal Code Art. 325) is punishable by a fine ranging from 2,000 to 4,000 conventional units (same as passive bribery) and by up to 6 years' imprisonment. If there are aggravating circumstances, the sentence increases to between 3 and 7 years' imprisonment, and to between 6 and 12 years for higher level of gravity. The fines also adequately increase.

Trading in influence (Criminal Code Art. 326) is punished by a fine from 2000 to 3000 conventional units or by imprisonment of up to 6 years. If there are aggravating circumstances, the sentence is between 2 to 7 years of imprisonment and goes up to 3 and 8 years of imprisonment for higher level of gravity.

The crime of illicit enrichment (Criminal Code Art. 330-2) is punished by a fine from 6000 to 8000 conventional units or by imprisonment from 3 to 7 years, with the deprivation of the right to occupy certain positions or to exercise a certain activity for a period from 10 to 15 years – for basic offence, and by imprisonment from 7 to 15 years for aggravated offence. The fines and disqualification levels also adequately increase.

Sanctions for bribery in the private sector are lower, however, still comparable to the level found to be adequate during the IAP monitoring in the previous 4 rounds of monitoring.

Passive bribery in private sector (Criminal Code Art. 333) is punished by a fine from 1350 to 3350 conventional units or by imprisonment of up to 3 years with the deprivation of the right to occupy certain positions or to exercise a certain activity for a period from 2 to 5 years – for basic offence; and by

imprisonment from 2 to 7 years for aggravated offence, and 3 to 10 years for higher level of gravity. The fines and disqualification levels also adequately increase.

Active bribery in private sector (Criminal Code Art. 334) is punished by a fine from by a fine from 1350 to 2350 conventional units or by imprisonment of up to 3 years – for basic offence; and by imprisonment for up to 5 years for aggravated offence, and 3 to 7 years for higher level of gravity. The fines levels adequately increase.

Moldova did not provide figures that show routinely applied proportionate and dissuasive sanctions. In particular, in 2020 sanctions were applied in the first instance for crimes of passive and active bribery in public sector, passive bribery in private sector, trading in influence and money laundering for corruption offences, and included 116 fines, compared to 55 instances of imprisonment and 25 instances of deprivation of the right to hold certain positions. In 89 of these instances, the punishment was conditional.

Additionally, according to statistics provided in regards to the decisions taken by the Supreme Court in 2019-2020, which took irrevocable sentencing decisions or upheld the decisions of lower courts in 71 criminal cases against 85 persons accused of committing the crimes provided by art. 324, 325, 326, 333 of the CC, 7 persons were sanctioned with imprisonment, 8 with imprisonment and a fine, and 34 persons with only a fine. The average imprisonment term in sentences with actual time in jail is at the lower end of the prescribed sanctions – 3.5 years for 7 persons with imprisonment and 4 years for 8 persons sanctioned with fine and imprisonment. Finally, 10 persons, who were sanctioned with imprisonment and 26 persons with imprisonment and fines – received suspended sentences.

Benchmark 9.2.2.

Proportionate and dissuasive sanctions are routinely applied for corruption crimes

At least 50% of punishments for aggravated bribery offences in the public sector provided for imprisonment without conditional or another type of release

Benchmark 9.2.3.

Public officials convicted of a corruption crime are dismissed from public office in all cases

According to the government in 17 out of 22 convictions of corruption in public sector public officials were dismissed from public office. However, the benchmark requires that it be the case in all cases.

Benchmark 9.2.4.

General effective regret provisions are not applied to corruption crimes

In Moldova, provisions of general effective regret (“active repentance”) do not apply to corruption offences. Active repentance is applicable to minor or less serious offences committed for the first time (Criminal Code Art. 57 (1)) – corruption offences fall outside of the scope of this definition.

Benchmark 9.2.5.

Any exemption from bribery offence, if stipulated in the law, is applied by courts taking into account circumstances of the case (i.e. not automatically) and with the following conditions:

- voluntary reporting is valid during a short period of time and before the law enforcement bodies became aware of the crime on their own;
- not possible when bribery was initiated by the bribe-giver;
- requires active co-operation with the investigation or prosecution;
- not possible for bribery of foreign officials.

Indicator 9.3. The statute of limitations period and immunities do not impede effective investigation and prosecution of corruption

Benchmark 9.3.1.

The statute of limitations period and time limit for conducting an investigation, if they exist, are sufficient for the effective enforcement of corruption offences. The law suspends the statute of limitations in certain cases, in particular during the period when the person had immunity from prosecution.

According to Art.16 of the Criminal Code, corruption offences fall within the classification of serious offences (active bribery in public sector, trading in influence, passive and active bribery in private sector) and extremely serious offences (passive bribery in public sector and illicit enrichment), as they constitute acts for which criminal law provides for a maximum punishment by imprisonment between 5 and 12 years (serious offences), and more than 12 years (extremely serious offences) respectively. 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.

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 his request. If it is necessary to extend the criminal investigation period, the criminal investigation officer shall draw up a motivated request to that effect and shall submit it to the prosecutor before the expiry of the period set by him.

During the on-site visit, Moldovan investigative and prosecution authorities have confirmed that the statute of limitations and time limit for conducting investigation do not present any problems in corruption cases. Non-governmental stakeholders seconded these opinions.

Although the statute of limitations and time limit for conducting an investigation appear lengthy enough for effective investigations in principle, the benchmark contains an element requiring that statute of limitation be suspended in certain cases, in particular, at least during the period when the person had immunity. Moldovan legislation does not allow for such suspensions and therefore this element of the benchmark is not met. Moreover, in 2019-2020, 4 persons were released from criminal liability in connection with the expiration of the limitation period of prosecution in corruption cases, which further confirms that this can be an impediment in practice.

Benchmark 9.3.2.

Immunities do not impede the effective investigation and prosecution of corruption crimes committed by persons with immunity, in particular, immunities are lifted based on clear criteria and transparent procedures without undue delay

In Moldova, special conditions for criminal investigations and hearings apply to certain categories of persons benefiting from a certain degree of immunity. These are secured based on the provisions of the Constitution, the Criminal Procedure Code and other laws and regulations. It is within the preview of the prosecutor to address to the relevant authority notifications related to the lifting of immunities of certain persons and to initiate a criminal investigation against them (Criminal Procedure Code, Art. 52).

According to the Constitution, the Parliament may decide to indict the President by at least two thirds of the votes in the event he or she commits the offence. In such cases, the Supreme Court is ascribed the power of prosecution (Art. 81).

Criminal investigation against a judge may only be initiated by the Prosecutor General with the consent of the SCM. The Prosecutor General with the consent of the SCM may only initiate criminal investigation against a judge. Preliminary consent of the SCM is not required in case of the offences of passive corruption (Art. 324) and trading in influence (Art. 326) of the Criminal Code. Prior consent of the SCM is also required for detaining, arresting or searching a judge, except in case of a flagrant offence and offences of passive corruption and trading of influence, the same as mentioned above (Law on status of the judge, Art. 19). No issues to investigation or prosecution of corruption perpetrated by judges were flagged by the law enforcement or by the non-governmental stakeholders.

The Member of Parliament (MP) may not be apprehended, arrested, searched, except when caught in the act of committing a flagrant offence, or sued at law without the prior consent of the Parliament and upon hearing of the member in question (Article 70, Constitution of Moldova). According to the Law on the status of MPs, requests to waive an MP's immunity are submitted to the speaker by the Prosecutor General. They are announced to the Parliament in plenary session within 7 days of the request and then examined by the Standing Legal Committee for Appointments. The procedure for lifting immunity in accordance with the Rules of Procedure of the Parliament can take up to 15 days. Moreover, the procedure provides for the participation of the person in question and may allow for the study of some case materials. This, in fact, can lead to the destruction of evidence on the part of the suspects, as well as to the escape of the suspects themselves.

Furthermore, in order to lift the immunity of an MP, the investigative authorities need to gain the support of the Prosecutor General, who, in turn, must apply to Parliament with a corresponding petition. The monitoring team was not provided with requested statistics on the number of refusals by the Prosecutor General to submit petitions and the number of applications filed for lifting immunity, neither was it provided with information on the lifting of immunity from members of parliament in the context of their belonging to different political forces. Nevertheless, it concluded that the provision of the Constitution of Moldova cannot impede effective investigation and collection of evidence in cases of active and passive corruption committed by MPs. In this category of cases, a search is one of the most effective investigative actions and allows to take advantage of the surprise effect for the most efficient collection of evidence. Although there are some exceptions to this rule, it is actually not applicable in practice. In their answers to the questionnaire, Moldovan authorities also stated that criminal investigation bodies perceive immunities as impediments in ensuring an efficient process of accumulating direct evidence, which cannot be repaired at the next stages of the criminal investigation, and confirmed that intervention after the lifting

of these immunities, in non-secret procedures, in practice, could lead to the destruction of evidence by suspects.

To assess compliance with this benchmark, the monitoring team was to look at the following issues: whether there are clear criteria for lifting immunity, whether procedures for lifting immunity are transparent and whether such clear and transparent procedures are applied in practice without undue delay.

The authorities did not provide information proving that criteria for lifting of immunity are clear, i.e. not ambiguous and excessively broad to allow unlimited discretion of decision-making body. Similarly, information was not provided proving that respective procedures are transparent, i.e. the law regulates main steps and provides for publication of information about the outcomes of each step and final outcome. Overall statistical data on opened criminal cases concerning public officials with immunity for corruption offences and cases concluded with final conviction was not provided by Moldovan authorities. The number of cases when the parliament, judicial council or another responsible body denied lifting immunity of the person with immunity suspected/accused of corruption crime was also not provided to the monitoring team.

Nevertheless, the monitoring team assessed available legal acts and opinions shared at the on-site and through the questionnaire, and concluded that immunities may, if not already, impede the effective investigation and prosecution of corruption crimes committed by persons who enjoy immunity. Of particular concern are possible investigation and prosecution of corruption perpetrated by the MPs.

Indicator 9.4. Enforcement statistics on corruption offences is used for analysis and available for the public

Benchmark 9.4.1.

The authorities, on a central level, collect and analyse enforcement statistics on corruption offences, including the number of cases opened, cases terminated, sent to court, ended with a final conviction, types of punishments applied, type of officials sanctioned

Despite the existence of a database maintained by the Ministry of Internal Affairs ("Register of forensic and criminological information"), Moldovan authorities do not pay sufficient attention to the collection and analysis of all the necessary information. In particular, the database mentioned above, is based only on the information from the authorities that carry out the pre-trial investigation. Other criminal justice institutions, namely, the Anti-Corruption Prosecution Office and the General Prosecutor's Office of Moldova, keep separate statistics. Court administration is keeping court statistics. In principle, most categories of statistical data mentioned in the benchmark 9.4.1. appear to be collected by one of the Moldovan authorities, including the number of cases opened, terminated, sent to court, types of punishment applied, with exception of information on final convictions, which Moldovan authorities failed to provide for assessment of various indicators, of several PAs, including this one. It is also not clear if information on the number of officials of different types (level of seniority, category, etc.) sanctioned under each corruption offence is being collected. At the same time, the exchange of information between these various authorities (investigative, criminal justice, judicial), as well as the monitoring of the status of cases sent to the court by law enforcement agencies, does not appear to be carried out on an ongoing basis.

The benchmark also requires that the national authorities conduct regular analysis of such enforcement statistics. Moldova did not provide examples of such an analysis to the monitoring team. Moreover,

analysis, if conducted would be done in a dispersed manner – by various institutions for their various purposes - as opposed to analysis done on a central level.

Benchmark 9.4.2.

Detailed enforcement statistics on corruption offences is regularly published online

Information provided does not show that detailed enforcement statistics on corruption offences containing all information, described under benchmark 9.4.1, is regularly published online.

10 Enforcement of liability of legal persons

Background

Moldova established liability of legal persons for corruption offences in law, with the exception of passive corruption in the private sector, fairly effectively, including its broad scope and autonomous nature. Monetary sanctions are proportionate and dissuasive and non-monetary sanctions are also foreseen in the law. Due diligence defence is not available however and there are no sentencing principles for legal persons. Statute of limitations and time limits for investigations seem to be adequate. However, the problem is that all these exist so far on paper only. Moldova demonstrated no enforcement of liability of legal persons for corruption offences.

Indicator 10.1. The law provides for an effective standard of liability of legal persons

Assessment of compliance

Benchmark 10.1.1.

Liability of legal persons for corruption offences is established in the law

Criminal Code of Moldova, Art. 21 states that legal persons, except public authorities, are criminally liable for an act prohibited in the criminal law. However, para 4 further states that legal persons are criminally liable only for the crimes for which the Code specifically mentions sanctions for legal persons. Sanctions for legal persons are mentioned in most of the provisions covering corruption offences included in the Criminal Code, with the exception of bribe taking in the private sector, regulated by art. 333 of the Criminal Code. During the on-site visit, the authorities put no explanations forward as to the rationale behind this exception.

Benchmark 10.1.2.

Actions of lower-level employees, agents, third parties or beneficial owners (controllers) of the legal entity may trigger corporate liability

Corporate liability in Moldova is triggered by actions of:

- natural person empowered with management functions;
- was admitted or authorized, or approved, or used by the person empowered with management functions;
- due to the lack of supervision and control on the part of the person empowered with management functions.

A natural person is considered to be empowered with management functions if he or she has at least one of the following functions:

- representation of the legal person;
- making decisions on behalf of the legal person;
- exercising control within the legal person.

Moldovan authorities assert that the mentioned legal provisions exclude the criminal prosecution of the legal person, for the actions of a lower-level employee of the legal entity for the crime of corruption or for any other criminal act. The monitoring team however disagrees and thinks it incorrect, as lower-level employees, agents or third parties, authorized or used by a person with management functions would trigger corporate liability. The same could be said about a lack of supervision and control by senior management over crimes committed by lower-level employees, agents or third parties. Similarly, the relevant text of the Criminal Code does not exclude the possibility of such crimes being perpetrated by beneficial owners, as defined by art. 3 of the AML Law.

The Guide on investigating crimes committed by legal persons, approved by Order no. 98 / 11 of 22 December 2020 of the Prosecutor General, does not seem to shed further light on this issue.

Similarly, Moldova refers to a case where a company was investigated for bribes paid by their senior management and effective beneficiary, albeit no information was provided on whether this investigation concluded in charges against the company or the natural persons involved.

Benchmark 10.1.3.

Liability of legal persons is autonomous, i.e. not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted or convicted

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 para 4 further states that corporate liability shall not exclude the liability of natural persons for the crimes committed, which clearly delineates the two forms of liability, and suggests the possibility that they could run separate courses in the criminal procedure. This interpretation of the issue was further clarified during the on-site discussions and in the papers submitted by the authorities after the visit. According to the authorities, the corporate liability does not require a previous conviction of the natural person. If the natural person is not identified, the criminal action will be split in different legal proceedings that will each run their separate course.

Indicator 10.2. Sanctions for legal persons are proportionate and dissuasive

Assessment of compliance

Benchmark 10.2.1.

The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including monetary fines proportionate to the amount of the undue benefit

The applicable sanctions for the corporate liability are stated in the Criminal Code of Moldova, Art. 63 and include:

- Fines;
- Deprivation of the right to practice certain activities;
- Liquidation.

Fines shall be applied as a main punishment. The deprivation of the right to practice certain activities and the liquidation of the legal entity may be applied both as main and complementary punishments.

Art. 64 states the amount of the fine for legal entities and establishes limits in conventional units (1 conventional unit is 20 lei). The minimum fine for corruption offences would then be 3,000 cu (60,000 lei or approx. 15,000 USD) and the maximum would be 18,000 cu (360,000 lei or approx. 72,000 USD). The maximum amount seems to be rather large in relation to the Moldovan economy. However, 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 Art. 385 of the Criminal Procedure Code and art. 75 of the Criminal Code, which contain the general criteria for the determination of the sanction and particularly on Art. 64 para 4 of the Criminal Code, which contains criteria specifically applicable to legal persons, including the amount of damage caused as well as the economic and financial condition of the legal person.

The sanctioning system in use for corporate offences uses a proportionality link between the amounts of the bribe on the one hand, and the amount of the fine, on the other, by setting increasingly aggravated forms of the baseline crime, each with proportionately higher level of sanctions. Art. 326, for example, incriminates trading in influence in one baseline form (sanctioned with a fine between 4,000 to 6,000 cu) and two aggravated forms: when the crime involved a high bribe¹⁸ the fine is between 5,000 to 10,000 cu, and if the crime involved a very high bribe¹⁹, the fine is between 7,000 to 12,000 cu.

¹⁸ According to art. 126, a bribe is considered high if it is more than 20 times the average national salary.

¹⁹ According to art. 126, a bribe is considered very high if it is more than 40 times the average national salary.

Benchmark 10.2.2.

Non-monetary sanctions (measures) apply to legal persons (e.g. debarment from public procurement, revocation of a license)

According to art. 73 and 74 of the Criminal Code, 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 discussions, it was also conceded that the right to participate in public procurement proceedings is also covered, though not explicitly, by art. 73. No case law has been provided in order to further analyse how courts interpret the scope of these sanctions.

Benchmark 10.2.3.

The law establishes sentencing principles specially designed for legal persons

The Criminal Code stipulates that the amount of corporate fine be determined by the court taking into consideration general criteria (nature and the seriousness of the crime committed, the extent of the damage caused, economic and financial condition of the legal entity). There are no other material or procedural provisions on sentencing specifically designated for legal entities.

Indicator 10.3. Due diligence (compliance) defence is in place

Assessment of compliance

Benchmark 10.3.1.

The law allows due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions

The Criminal Code of Moldova does not provide for the possibility of due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions.

Benchmark 10.3.2.

The law allows the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court

The Criminal Code of Moldova does not allow the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court.

Indicator 10.4. Statute of limitations period and investigation time limits do not impede effective corporate liability

Assessment of compliance

Benchmark 10.4.1.

The statute of limitations period and time limit for conducting an investigation, if exist, are sufficient for the effective enforcement of corporate liability

Statute of limitations and time limits for conducting an investigation against a legal person are the same as for the natural person. See analysis of compliance under Performance Area 9. In principle, legal persons would be liable for corruption offences that are considered a serious crime (CC Art. 16(4)). This is because they carry a maximum punishment by imprisonment for a term of up to 12 years inclusively. CC Art. 60(c) then determines that for serious crimes the prescription period is 15 years from the commission of a serious crime. The exceptions are set in art. 334 para (1) and (2) and in art. 326 para (11), which carry a prescription period of 5 years, attached to imprisonment terms of less than 5 years. The provisions seem sufficient for effective enforcement of corporate liability.

Indicator 10.5. Liability of legal persons is enforced in practice

Assessment of compliance

Benchmark 10.5.1. – 10.5.5.

BENCHMARK	Moldova 2020	
	Total number of convictions	Per 1 million of population
10.5.1. Track record of corporate sanctions applied for corruption offences	0	0
10.5.2. Track record of proportionate and dissuasive sanctions imposed on legal persons, including monetary fines	0	0
10.5.3. Track record of confiscation of direct and indirect corruption proceeds, value-based confiscation applied to legal persons	0	0
10.5.4. Track record of due diligence (compliance) applied in practice as a defence or a mitigating factor	0	0
10.5.5. Track record of non-monetary sanctions applied to legal persons	0	0
Comments: Population of Moldova was 2.6 million in 2020 (source: https://data.worldbank.org/country/moldova)		

After the on-site visit, the authorities informed that no final convictions of legal persons for corruption offences were registered in the past 5 years. The same holds true for the number of administrative measures imposed on legal persons convicted for corruption offences.

Indicator 10.6. Enforcement statistics on corporate liability is used for analysis and available for the public

Assessment of compliance

Benchmark 10.6.1.

Authorities collect, analyse and regularly publish online detailed statistics on detection, investigation, prosecution, trial and sanctions applied to legal persons

Statistics are collected in the “Register of forensic and criminological information” by the Ministry of Internal Affairs. However, detailed statistics are not published online. No examples of analysis were provided. Moldova reports that in 2021, the Agency for Court Administration should collect and public information related to the performance of court’s activity (trial and sanctions only). Starting in 2021, the statistical reports would be automatically generated by the Judicial Information System. Unfortunately, the link provided (www.csm.md/files/Acte_normative/Reg_stabilirea%20gradelor%20complexivitate.pdf) refer to a non-updated 2014 report and only describes the type of crime and not stage of sanctions in the criminal procedure. See more in regards to statistics under indicator 4 of the PA 9.

11 Recovery and management of corruption proceeds

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 Center. It now has the staff of 32 persons and the mandate, which covers all relevant functions. The tax authority has the mandate to sell confiscated assets or dispose of them otherwise.

CARA has a high track record of the use of parallel financial investigations conducted with the involvement of financial analysts or financial investigators and other relevant experts in corruption cases. Its authorized staff have direct access to the necessary databases and they use mechanisms to obtain bank data without obstacles. However, the cases of assets recovered from abroad in the past 3 years is still very limited. There is no regular audit of the managed assets and a database of assets placed under CARA's management is still in design form; however, considerable steps to set up such database, as well as to put a provisional mechanism in place have been taken by Moldova.

Seizure and confiscation are reportedly applied in the first instance but there is no information in regards to final decisions or executed orders. Moreover, there is no track record of cases of more complicated confiscation measures, even at first instance level (indirect proceeds, value-based confiscation, mixed proceeds, non-conviction based or extended confiscation). Comprehensive statistics is not available and is not analysed.

Indicator 11.1. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Assessment of compliance

Benchmark 11.1.1.

Dedicated bodies, units or groups of specialised officials dealing with identification, tracing and return of corruption proceeds (asset recovery practitioners), as well as with the management of seized and confiscated assets in corruption cases are established and function in practice

The Criminal Asset Recovery Agency (CARA) within the National Anti-Corruption Centre (NAC), created by the Law 48/2017 on CARA, has a mandate and responsibility to: 1) identify, trace and organise return of corruption proceeds (asset recovery function); and 2) organise management of seized and confiscated assets in corruption (asset management function). CARA officials are specialised, in that they deal exclusively with asset recovery and asset management in criminal cases and do not perform other duties

and they are responsible for corruption offences, as defined by the monitoring methodology. This is in line with the benchmark.

These functions are stipulated in the Law 48/2017 on CARA and Chapter III of the Criminal Procedure Code of Moldova (CPC), which regulates asset recovery issues.

According to the Law on CARA, it is a specialised autonomous unit of NAC with a separate budget line assigned to it (Art. 4). Its competencies include:

- Conduct of parallel financial investigations and development of protocols based on the results of these investigations, issuance of freeze orders;
- Evaluation, management and use of frozen assets;
- Record keeping on frozen assets;
- Negotiations on asset recovery;
- International cooperation with the view of information exchange with competent foreign authorities;
- Collection and analysis of statistical data on crimes covered by the Law on CARA;
- Representing the interest of the state and legal entities in asset recovery civil procedures, as well as related damages;
- Cooperation with relevant state authorities necessary for carrying out its functions;
- Support of judiciary in the use of the good practices in asset recovery and management.

According to the provisions of the CPC, the identification and pursuit of criminal assets is carried out by conducting parallel financial investigations (Art. 229-2 para. (1)). For corruption offences and those related to corruption, including Art. 324–329, 330-1, 330-2, 332–335-1 of the Criminal Code (CC), as well as other offences generating illicit profits, including CC Art. 240 (money laundering), parallel financial investigations are carried out by CARA. CARA may conduct parallel financial investigations only on the basis of a request order in a concrete criminal case issued by the criminal investigative body and only in respect of a person who has the procedural capacity of a suspect or accused (CPC Art. 229-2 para. (2) and Art. 258 para. (3)). CARA cannot initiate parallel financial investigations *ex officio*.

Parallel financial investigations are carried out by CARA officers of criminal prosecution, who accumulate evidence in regards to assets, in accordance with the provisions of the CPC. In their activities, they can request the intelligence gathering, informational and other support from investigating officers, experts, analysts, etc.

Asset management functions in corruption cases (the same list of offences applies, as above) is assigned to CARA by CPC (Art. 229-6 para 2), and should be carried out in accordance with the Law on CARA and Government Decree 684/2018 on approval of regulation on evaluation, management and use of seized criminal assets. The Government Decree stipulates that in evaluation, asset management and selling of the assets, CARA works with the Ministry of Finance and Tax Administration, which is, for example, responsible for auctions of the assets. CARA can also contract legal persons for the purpose of management and disposal of assets; this, for example, has been done for sales of seized cars.

To comply with the benchmark, Moldova needs to demonstrate that the functions mentioned in the benchmark (identification, tracing, return of corruption proceeds, management of seized and confiscated assets in corruption cases) are covered by mandate in practice.

In practice, CARA was established in 2018 within the NAC with the status of the Main Directorate. To carry out its functions, CARA employs officers of criminal prosecution, investigative officers, experts, analysts and specialists in accounting, audit, etc. CARA's staff of 17 persons has been increased to 32 at the end

of 2021; of them 25 are staff of ARO and 7 are staff of AMO. In addition, Moldovan authorities informed that AMO has 8 vacancies, of which 7 have already been filled, with recruitment on going for the remaining one. In 2019, the average number of CARA employees was 18 and the budget constituted 6 466 400 lei. In 2020, the average number of employees was 24, with the budget of 8 290 200 lei. In 2021, 32 employees work within CARA, with the budget of 12 933 900 lei.

According to the information provided by Moldovan authorities, in 2020, CARA received 158 requests from various bodies of criminal investigation to commence parallel financial investigation and executed 148 of them. It has also produced 218 analytical reports. Of these requests 31 concerned corruption cases: 17 of them came from NAC, 11 – from APO, one from POCOCSC and one from GPO, one more request came from other authorities. CARA executed 28 of these requests. As a result, NAC seized 73 assets of approximate value of 450 000 euros; APO seized 17 assets of approximate value of 2 million and 125000 euros; GPO seized 38 assets of approximate value of 1 million euros; others seized over 360 assets with approximate value of 355000 euros. Furthermore, the authorities informed that out of the total number of 382 requests to CARA between the period 2020-2021, 121 requests came from APO and POCOCSC concerning serious crimes with multiple perpetrators, and that CARA was involved in investigations on all cases with resonance, with the value of the seizures applied by CARA in the last 4 years exceeding the value of the seizures cumulatively applied in the same period by all law enforcement agencies of Moldova.

The automated information system, which is to keep record of criminal assets has been approved by the Government Decision 34/2020 but has not been created yet. Currently, CARA only keeps records in the cases in which it is itself involved. In the meantime, the authorities report that CARA has developed an alternative system. It has passed the testing stage and is currently being discussed with the prosecution office, which has to feed the information into the system for storing on the CARA server. The system is ready for use and should be made operational shortly. In 2019-2021, the GPO jointly with the ARO developed the guide on conducting parallel financial investigations (approved by the Order of the GPO 18/11 from 09.04.2019) and the methodological instruction on the asset recovery (Order of the GPO 54/6 from 23.07.2021). In 2021, GPO, NAC, Tax Service and FIU issued a joint Order 29/38/270/12 from 18.05.2021 on the approval of the mechanism for the recovery of stolen funds from the banking system. Together with GPO and APO employees, ARO employees participate as trainers on asset recovery topics for prosecutors and judges. Quarterly joint meetings are held on topics of common interest. In the same way, the NAC management has regular meetings with the GPO management. However, during the on-site the monitoring team did not see active participation and in response to additional requests for information did not receive necessary information from other interlocutors than CARA. This raised questions on their involvement in asset tracing and asset recovery processes and was believed to explain limited data available on performance of other stakeholders involved in the process: police, prosecutors, courts, MoJ (for international cooperation) and other authorities, such as Tax Service.

CARA's staff who perform the functions of officers of prosecution and investigators have experience mainly in corruption offences, however, their officers participate in special tailored training on specificities of financial investigations. The monitoring team believes that to further develop the skills and streamline professional development of its staff CARA could also consider developing its own training for its ARO and AMO staff.

The monitoring team concludes that the benchmark is also met in practice.

Indicator 11.2. Identification and tracing of corruption proceeds are effective

Assessment of compliance

Benchmark 11.2.1.

Investigative bodies and asset recovery practitioners use direct access to state databases for corruption investigations and recovery of proceeds of corruption

According to Moldovan authorities, the anti-corruption investigative bodies and asset recovery practitioners have direct access to all databases that are necessary for investigation of corruption offences and asset recovery of proceeds of corruption. This includes a wide range of registers and databases – more than 20 in total, such as the register for immovable assets, fiscal and tax office registers, customs registers, databases of traffic police and border police, the state register of forensic and criminological information of the Ministry of Interior, etc. The access is direct and for the databases that are not open to the public, the authorized CARA officials use their credentials to login and obtain access to data; and for some databases they are granted a special electronic certificate.

The monitoring team was told that there were no cases of refusal or created obstacles for direct access of investigative bodies or asset recovery practitioners to state databases or financial information in 2020.

As the legal mandate of CARA includes conducting parallel financial investigations, this provides a sound starting point for efficient asset recovery system. These powers need to be used as a general practice and extended to all crimes that generate illicit gains.

Benchmark 11.2.2.

Investigative bodies and asset recovery practitioners use direct access to financial information, including a central registry of bank accounts, and mechanisms to overcome bank secrecy for corruption investigations and recovery of proceeds of corruption

According to Moldovan authorities, the Central registry of bank accounts operates in Moldova and its keeping is ensured by the State Fiscal Service (SFS). This register contains information regarding bank accounts of physical and legal persons, including the number and type of the account, name of the bank, opening date, currency, and closing date. CARA authorized officials can access it directly through accessing the information system of the SFS, as described under the benchmark 11.2.1. Art provides the legal basis for such access. 6 para 1 (a) and (c), and Art. 14 para 11 of the Law on CARA can be used once there is a request from the criminal investigation body to conduct parallel financial investigations into a suspect or an accused, or when there is a request of the foreign competent authority made in the framework of international cooperation in the field of asset recovery.

Information, which constitutes bank secrecy, can be obtained by the investigative bodies in corruption cases with authorization of the investigative judge (CPC Art. 126, para. 2). The criminal investigation officer sends the materials to the prosecutor, who submits a request to the investigative judge, who authorizes the collection of the information that constitutes banking secrecy. The order for the seizure of the information that constitutes banking secrecy and the conclusion of the investigative judge by which the seizure was authorized must be executed immediately by the banking institutions.

Information (documents, materials, etc.), transmitted to CARA by banking institutions in order to recover criminal assets, does not constitute disclosure of trade, banking, professional or personal data (Art. 14, Law on CARA). The data exchange with the banks is carried out through an encrypted, secure data exchange channel. However, for such information to be admitted as evidence in criminal proceedings, CARA officers need to follow the same procedure for authorization by investigative judge, as done by other criminal investigative officers.

The monitoring team was told that there were no cases of refusal or created obstacles for direct access of investigative bodies or asset recovery practitioners to financial information in 2020.

Benchmark 11.2.3.

Active and secure exchange of information among asset recovery practitioners, financial intelligence units, investigative and prosecutorial bodies is ensured in practice

Active exchange of information means that there are established operational instruments of information sharing, which are systematically and regularly applied in practice. Exchange of information only on an occasional basis would not be sufficient to meet the benchmark. Multi-disciplinary groups or task forces, joint online communication platforms, regular joint meetings, joint investigative teams are among possible examples of tools of active inter-agency cooperation and information exchange. Secure exchange of information means that information sharing takes place through reliable channels or mechanisms with appropriate protections and safeguards that prevent unauthorized access and tampering.

Moldovan authorities maintain that the cooperation of CARA with national law enforcement is direct, or via the requests and is continuous. Following the on-site, they further elaborated that such cooperation is carried out both formally and informally, and further opined that there is an active and efficient exchange of information between authorities through both these types of cooperation.

Formally, the cooperation is carried out through written procedures (on paper), physically signed or with electronic signature, through which it is requested to perform some actions and, or to provide the necessary information for collection of evidence.

Informally, CARA specialists organize working meetings with the ant-corruption criminal investigation and prosecution bodies, which ordered the conduct of parallel financial investigations, in order to coordinate the criminal prosecution actions and tactics within the investigations. Meetings are also held with investigating officers, prosecuting officers, prosecutors who have documented the crime in order to obtain additional information on the criminal act committed, the perpetrator, possible accomplices and or other data that would contribute to the effective and complete identification of all relevant assets. Authorities further informed that cooperation takes place, not only on specific criminal cases, but also on the development of investigative tools. To this end in order to enhance cooperation between the actors of the asset recovery process, CARA, jointly with the GPO and other entities have developed the parallel financial investigations guide (order GPO 18/11 of 09.04.2019) and the asset recovery methodology (ordinal GPO 54/6 of 23.07.2021).

Cooperation with the Financial Intelligence Unit (FIU) takes place on the basis of written requests, and liaison officers are appointed between FIU and CARA to ensure more efficient communication.

In addition, the authorities have informed that information exchange agreements have been signed with the Tax Service, FIU, Public Service Agency, and the Court Administration. Communication with law

enforcement agencies is maintained on high-profile and other criminal cases and semi-annually, or as needed, CARA organizes working sessions with Tax Service, Customs, POCOCSC, APO, General Police Inspectorate (GPI) and Center for Combating THB on issues arising. In 2020, CARA had several meetings with the leaders of the given subdivisions. The above mentioned tools are reportedly utilised in practice and CARA officers are being included in investigative groups. In a way of example, the authorities informed that during the investigation of the so-called "bank fraud" case, several operational tools for the exchange of information regulated by the Strategy to recover financial assets stolen from banks, as well as the Joint order NAC, GPO, Tax Service, FIU have been utilised and applied to all requests arriving in the case (40 requests in 11 cases, against of 144 subjects) and a JIT, which included CARA officers was created between Moldova and Latvia.

Benchmark 11.2.4.

BENCHMARK	Moldova 2020	
	Total number of cases	Per 1 million of population
11.2.4. Track record of the use of parallel financial investigations conducted with the involvement of financial analysts or financial investigators and other relevant experts	28	11
Comments: Population of Moldova was 2.6 million in 2020 (source: https://data.worldbank.org/country/moldova)		

Benchmark 11.2.5.

Requests of foreign jurisdictions for the identification tracing, seizure, other restraints or confiscation orders concerning assets in corruption cases, if received, are executed without delay

According to Moldovan authorities, requests of foreign jurisdictions for the identification, tracing, seizure, other restraints or confiscation orders concerning assets in corruption cases, if received, are executed immediately, but not later than 1 or 2 days, in cases when requested information is contained in the national databases to which CARA has direct access. With regard to information, which needs to be requested from the bank, or information on aircraft or seagoing vessels, replies to foreign authorities are being sent promptly as information arrives from banks or local authorities.

In 2020, CARA received and executed 21 information requests about 108 subjects from Romania, Ukraine, Bulgaria, Czech Republic, Greece, Belgium, Algeria and Russian Federation, none of these requests related to corruption cases. Furthermore, according to the Government, they have close cooperation via CARIN and SIENA with many jurisdictions, especially with Romania, Ukraine, Bulgaria, Ireland, Belgium, France and the UK. An example of a JIT set up on a resonance case with Latvia, in which CARA officers were also included, was provided by Moldova.

The monitoring team has no evidence that foreign requests are executed with delays, therefore the benchmark is considered to be formally met.

Integration of CARA with available regional and global mechanisms such as the EU ARO Platform or CARIN represents a good step into the right direction. However, the monitoring team stresses the need to further strengthen the institutional capacity of Moldavian authorities to follow up sharing of information with enforcement and execution of seizing and confiscation orders. Statistical data provided is limited with no corruption cases with international dimension, which reflects a limited capacity to act and interact internationally on such cases.

Benchmark 11.2.6.

Requests to foreign jurisdictions for asset identification, tracing, seizure or confiscation in corruption cases (including non-conviction based forfeiture, if available) are made without delay

Moldovan authorities report close cooperation with several jurisdictions, such as Romania, Ukraine, Bulgaria, Ireland, Belgium, France, etc. They further stated that thanks to this cooperation, Moldova managed to identify and seize assets in Romania, Bulgaria, France, Switzerland, etc. Some of these jurisdictions have already confirmed at the national level the seizure warrants issued by the Moldovan authorities. The monitoring team presumes that requests to foreign jurisdictions for asset identification, tracing, seizure or confiscation are being made and has no evidence that outgoing requests were made with delay.

Indicator 11.3. Confiscation measures are enforced in corruption cases

Background

Compliance with the benchmarks of this indicator presume cases of final confiscation, and or final orders on provisional measures, specifically in corruption cases. With exception of cases in which Moldovan authorities confirmed the absence of practice, the information, which they did provide in regards to confiscation ordered in corruption cases either concerns only first instance courts or is missing. Information on executed confiscation orders is also missing.

Assessment of compliance

Benchmark 11.3.1.

Provisional measures are routinely applied to prevent the dissipation of assets

Provisional measures in corruption cases fall under the competence of APO and the criminal prosecution body of NAC. The total number of corruption related criminal cases initiated in 2020 was 745 cases, of which 644 cases were initiated by the NAC and 101 cases were initiated by the APO. The total number of accused in initiated corruption cases was 256 persons. Out of this number, at the request of NAC and APO, CARA carried out parallel financial investigations in 196 criminal cases regarding 80 persons. Subsequently, APO and criminal prosecution body of NAC applied seizure in 71 cases. The authorities further noted that in cases of petty corruption (i.e., where the amount of the bribe is small or could not be established), which are predominant from the total initiated cases, it is not necessary to carry out parallel financial investigations.

In 2020, provisional measures to prevent dissipation of assets were applied with the total value of seized assets by CARA being 377 481 201.55 MDL, by APO – 159 634 507.63 MDL, and by criminal prosecution body of NAC – 26 110 000 MDL, which amounts to 563 225 708 MDL or approximately 27 723 394 EUR. In addition to the seizures applied, in some cases the money that was the object of a corruption offence is recognized by the criminal investigation body as *corpus delicti* (evidence), which has the same purpose as confiscation – the transfer to state ownership. In this regard, in 2020 criminal investigation body recognized as *corpus delicti* assets in the total value approximately 51 725 euro in 33 criminal cases. Thus, the share between the number of initiated criminal cases and the number of criminal cases in which seizures were applied on assets, including cases where the assets were recognized as a *corpus delicti*, is 40.2%.

The monitoring team concluded that routine application is not achieved in line with the methodology, as it is not applied as a rule, but rather in less than half of cases. Moldovan authorities, however, believe that the percentage shows systematic application because provisional measures will not be merited in all cases and constitutes routine application.

Benchmark 11.3.2.

Confiscation of instrumentalities and proceeds of corruption offences is routinely applied and executed

To comply with the benchmark, the country needs to demonstrate routine application of confiscation of both instrumentalities and proceeds of corruption offences. It also needs to demonstrate routine execution of confiscation orders related to both instrumentalities and proceeds of corruption offences.

In 2020, from 127 decisions of conviction, 77 decisions on confiscation (in 60,6 % of cases) have been issued by the courts with the approximate value of 5 367 800 MDL (approximately 264 000 Euros) in regards to 74 orders, and 3 cars, 8 land plots and a mobile phone in regards to 3 orders. Of them 17 confiscation orders, amounting to 1 060 800 MDL (approximately 52 200 EUR), were related to instrumentalities; 20 confiscation orders, amounting to 1 804 500 MDL (88 800 EUR), were related to proceeds of corruption offences; 7 confiscation orders were adopted on the equivalent value of assets that could not be found or recovered. For 30 confiscation orders amounting to 2 007 500 MDL (approximately 98 800 EUR); there is no record attributing them to either instrumentalities or proceeds of crime.

In 2020, 71 confiscation decisions have been executed by the State Tax Service in corruption cases with the value of 1 294 490.50 MDL (approximately 63 700 EUR). Although, the authorities report that this represents an increase of 57.7% compared to the executed number in 2019, this is still approximately half of the value of the applied confiscation orders in 2019. According to the statistical data provided by national authorities, in 2019, a total number of 41 confiscation orders was issued by courts with the amount of 2 307 249.15 MDL (approximately 113 211 EUR). In the opinion of the monitoring team, these figures do not represent usual practice, where failure to apply or use is an exception while the application is a norm.

Benchmark 11.3.3. – 11.3.8.

BENCHMARK	Moldova 2020	
	Total number of cases	Per 1 million of population
11.3.3. Track record of confiscation of derivative (indirect) proceeds of corruption offences	7	3
11.3.4. Track record of confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	17	6.5
11.3.5. Track record of confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	Information provided regarding 1st instance courts only	0
11.3.6. Track record of confiscation of mixed proceeds of corruption offences and profits therefrom	20	7.7
11.3.7. Track record of non-conviction based confiscation of instrumentalities and proceeds of corruption offences	0	0
11.3.8. Track record of extended confiscation in criminal cases	0	0
<p>Comments: Population of Moldova was 2.6 million in 2020 (source: https://data.worldbank.org/country/moldova)</p>		

Indicator 11.4. The return and further effective and transparent disposition of the corruption proceeds is ensured

Assessment of compliance

Benchmark 11.4.1.

BENCHMARK	Moldova 2020	
	Total number of convictions	Per 1 million of population
11.4.1. Track record of the return of corruption proceeds from abroad	0	0
Comments: Population of Moldova was 2.6 million in 2020 (source: https://data.worldbank.org/country/moldova)		

Benchmark 11.4.2.

There is a wide perception among the main stakeholders that the transparent and effective use, administration and monitoring of returned proceeds is ensured, and their disposition does not benefit persons involved in the commission of the respective corruption offence.

Moldovan authorities report that no asset recovery from abroad in corruption cases has taken place from 2016-2020. According to Moldovan authorities, assets have been identified in Romania, Georgia, Bulgaria, France, Greece, Switzerland and Russian Federation. However, many of them lack value information, but the monitoring team was provided with their estimated value of approximately 4.5 million euros. At the same time, the authorities informed that the asset recovery procedure in regards to these assets have not been yet initiated as they are awaiting convictions. Representatives of the civil society consider that asset recovery should have a paramount role in fighting corruption and organized crime in Republic of Moldova. Up to date, no institution acts as a champion in this area, limited and uncoordinated actions being taken by police, prosecutors and CARA. According to other stakeholders the public outreach in this area is limited to several press releases reporting seizing of various assets, without impact on major cases, while the government maintains that public outreach has stagnated somewhat in 2020 due to pandemic but has been resumed in 2021, with press announcements 1-2 times a week, and cited a case of recovery of assets from abroad in regards to the son of the former top official of Moldova, in which the UK Government transmitted the amount of GBP 456 068 to the government of Moldova and , which is widely reflected in mass-media. In this case, asset recovery process was initiated by CARA, who provided information support and all processes, until the signing of the memorandum of understanding between the UK and Moldova on the return of the confiscated funds.

According to Moldova, over the last 3 years, CARA has identified and seized goods worth more than 5 billion lei, which represents about 2.3% of the Gross Domestic Product of Moldova for 2020. This result was achieved with the involvement of the prosecutor's office and the courts. In cases of corruption, as well as in the case of other profit-generating crimes, CARA has the primary role in the identification, seizure and administration of criminal assets. CARA establishes and coordinates the tactics of identification and seizure of property with the prosecution bodies, prosecutors. It should be noted that only on the case of "Bank fraud", seizures of about 2.2 billion lei were applied, which, according to Moldova, points to good

collaboration between actors. There are many ongoing criminal cases on trial, on which there is no definitive sentence of conviction and confiscation. In addition to the basic activities, CARA also provides continuous guidance to other representatives of law enforcement bodies on how to correctly and effectively apply the procedures for the recovery of assets, including judges.

Indicator 11.5. Management of seized or frozen assets is cost-efficient and transparent

Assessment of compliance

Benchmark 11.5.1.

Regular audit of the management of assets subject to provisional measures and confiscated assets in corruption cases, including on its cost-efficiency, is conducted by external independent auditors and its results are publicly available

The Government informed the monitoring team that CARA's activity has not been audited by the Courts of Accounts and no other external audit of the management of assets subject to provision measures and confiscated assets in corruption cases, including on its cost-efficiency, is being carried out.

The Court of Accounts conducts financial audit of the NAC every five years but the last such audit was carried out in 2018, when CARA was not yet fully functional.

Benchmark 11.5.2.

Where possible, contracting of private sector actors as asset managers and disposal of seized or confiscated assets is conducted on a competitive and transparent basis

Management of seized assets is within the mandate of CARA, while confiscated assets are managed and disposed of by the State Tax Service. In both cases, the private sector actors can be contracted.

Since October 2018, according to the Government Decision 684/2018, the contracting of private sector actors was made possible and 5 public tenders have been conducted since 2019. Since July 2020, the legislation further changed and, in 2021, 4 assets have been transferred to the private company of which 1 was sold and 3 are still pending. Another case is still at the trial stage.

Seized assets are disposed through two types of procedures: (i) public tender, organised by the State Tax Service in line with Law On Public Procurement 131/2015 and further regulated by the Government Regulation 972/2001; and (ii) sale through contracting economic agents on the basis of commission contracts.

While the first procedure appears to meet the criteria of the benchmark – i.e. it is done on a competitive and transparent basis, the second procedure does not meet these criteria, as it is not public for security reasons. In particular, in serious, particularly serious and exceptionally serious criminal cases related to organized crime, CARA can sell the seized assets through contracting economic agents on the basis of commission contracts. The monitoring team was explained that this is an exceptional measure; it refers to

the assets, which are direct proceeds of crime and are under the risk that the offender could follow the asset after it was sold. In such cases, selection of the company is still done in accordance with the provisions of Law On Public Procurement, by a Working group, designated by the order of the director of the NAC On the establishment of the procurement working group 32/2021, following the below procedure:

- NAC sends the offers to participate to several companies which are selling similar assets;
- Working group analyses the offers and selects the winner company, which offers the smallest commission.

The selected winner company can diminish the price only by 10% (including its commission), and it is not allowed by law to diminish the price by more than 10%. The price of the asset is established by expertise provided by an expert. The expertise of the price of an asset is made known to the offender, who can challenge it in accordance with CPC provisions. If the expertise of the price remains in force, the sale (disposal of the asset) is approved by the court order at the request of prosecutor.

In 2020, CARA did not sell any asset following the procedure mentioned above, because amendments to the Regulations of evaluation, management and disposal of seized assets, approved by Governmental Decision 684/2018, were made in the middle of 2020 and the director of NAC approved the Working Group for selection of the companies in 2021.

The monitoring team accepted that this closed procedure represents an exception and that even then Moldovan authorities takes measures to ensure wide participation of private sector and that the most competitive offer is accepted, therefore addressing the concerns of opacity of the procedure, lack of external control and reducing possibilities for abuse and corruption.

Benchmark 11.5.3.

A database of assets in corruption cases placed under the management of the state, which contains data on location, value, and other relevant information about the respective assets, is maintained and published online

In 2020, the Government has adopted decision 34/2020 approving the Technical concept of the automated information system “Register of seized criminal assets”. The system is expected to be interoperable with other systems managed by the authorities such as the integrated file management program, managed by the court, the “e-file prosecution” system managed by the GPO. Moldovan authorities inform that the next step is to implement this system by firstly developing specialized software, and that in the meantime they have developed an alternative temporary system, which is soon to be made operational. The monitoring team commends the plan launched in 2020 to develop an IT registering system, as well as the provisional measures that Moldova is taking in the run up to operationalisation of the new system. These are very important steps and it is understandable that they take time for implementation; the monitoring team also appreciates how far along the way Moldova is in this process. By registering all seized and confiscated assets, Republic of Moldova will have the capacity to adequately assess the efficiency of its asset recovery system and prioritise reforms to improve it. At the moment of this monitoring however, there was no database of assets in place yet.

Indicator 11.6. Data on asset recovery and asset management in corruption cases is collected, analysed and published

Assessment of compliance

Benchmark 11.6.1.

Comprehensive statistics on the application of seizure and confiscation measures in corruption cases is collected, analysed and regularly published online

The benchmark looks into the situation with statistics on the application of seizure and confiscation measures in corruption cases. Such comprehensive statistics should be collected on a central level, published on the Internet and available for the general public to access without technical barriers, and include at least the following data for the previous year:

- Number of final (entered into force) seizure, freezing of other restraint orders in corruption cases and the total estimated value of assets they concern.
- Number of final (entered into force) confiscation orders in corruption cases and the total estimated value of assets they concern.
- Number of confiscation orders in corruption cases actually executed and the total estimated value of confiscated assets.
- Number of different types of disposal methods used for confiscated assets in corruption cases and their value.

The benchmark also requires that the national authorities conduct a regular analysis of such statistics. The country needs to provide examples of such an analysis to the monitoring team to comply with the benchmark.

Moldovan authorities failed to provide the above-listed data for evaluation purposes under benchmarks reviewed under this Performance Area, therefore, the monitoring team assumes that such statistics is either not collected on a central level or is not collected at all. It also presumes that this information is not available to the public in a centralised manner and neither is it analysed by the national authorities.

Benchmark 11.6.2.

Regular, at least annual, reports containing detailed statistics related to the work of officials dealing with identification and tracing of corruption proceeds, as well as with the management of assets subject to restraining measures and confiscated assets, including information on the outcomes of their work, are published online.

The benchmark requires asset recovery and asset management units to at least annually report to the general public about their activities. The requested reports should contain at least the following data for the previous year:

- Statistics on the number and estimated value of traced and identified illicit assets in corruption cases;

- Statistics on international cooperation in the area of asset recovery in corruption cases, including number, types and value of assets returned to and from foreign jurisdictions;
- Statistics on the number, types and value of assets seized, frozen or restrained in a different way, and confiscated in corruption cases;
- Information about how all confiscated and returned assets in corruption cases were disposed;
- Financial data about budget incomes and expenditures related to the recovery and management of illicit assets in corruption cases;
- Capacities (staff, budget, office, etc.) of the asset recovery and management bodies, units or groups of practitioners;
- Key achievements and obstacles in the areas of asset recovery and management.

The Government did not provide information on detailed statistics related to the work of officials dealing with identification and tracing of corruption proceeds or management of assets.

The annual report of NAC for 2020 includes limited data on performance of the officials dealing with identification and tracing of corruption proceeds, as well as with the management of assets subject to restraining measures and confiscated assets. Statistical data is limited to the number of processed requests by CARA, the number of parallel financial investigations and the number of assets seized or confiscated as a result of these investigations with their approximate value. However, the information is not provided for final provisional orders or confiscation, as NAC and CARA do not keep track of such information. There is no information on how the assets have been disposed, financial data about budget incomes and expenditures related to recovery and management of illicit assets. The remaining section of the report devoted to asset recovery covers issue of legislative reforms initiated by NAC and or CARA, and CARA's activities in the area of international cooperation – not in regards to cases but rather on policy or expert level.

Furthermore, representatives of the civil society consider the public outreach in this area is limited to several press releases reporting seizing of various assets, without impact on major cases.

12 Investigation and prosecution of high-level corruption

The notion of high-level corruption appears to be not clearly understood by Moldova's law enforcement institutions. There is no indication that the authorities use lessons learned for the anti-corruption policy from the convictions in high-level corruption. They do not seem to influence the proposed legislative amendments, administrative changes, etc., nor the phenomena is analysed or these crimes differentiated from the others.

The competence of the Anti-Corruption Prosecution Office (APO) is broader than high-level corruption and they do not analyse convictions in high-level corruption cases. In fact, APO does not collect statistics on conviction cases in the cases they are investigating and prosecuting, as their competence is limited to prosecuting the cases in first instance courts. APO does not follow the case in appeal and other ways of judicial remedies. The National Anti-Corruption Center (NAC) has an analytical department which issues analytical studies regarding the phenomenon of corruption. No study specific to high-level corruption has been produced by NAC. The conclusion of one of its latest studies on 2020 courts decisions in corruption cases revealed that in 2020 the courts ruled on cases of petty corruption, with small amounts of the bribe, while high-level corruption cases could not be found in the analysed court decisions.

There is no evidence to conclude that the high-level cases have been actively detected or investigated. The public allegations do not seem to always find response from the law enforcement community and their reputation is not well perceived in this regard.

Indicator 12.1. Fight against high-level corruption is given a high priority

Background

"High-level corruption", according to the pilot monitoring indicators, means corruption offences, which meet both of the following criteria: 1) involve in any capacity punishable by criminal law (e.g. as masterminds, perpetrators, abettors or accessories) the high-level officials; 2) involve substantial benefits for the officials or their family members or other persons (e.g. legal persons they own or control, political parties they belong to) and/or significant damage to public interests.²⁰ "High-level officials" are the following appointed or elected officials: the President, members of Parliament, members of Government and their deputies, heads of executive and other central public authorities and their deputies, the staff of private offices of political officials, governors, mayors of country's capital and regional capital cities, judges, prosecutors,

²⁰ For the purposes of performance indicators, a substantial benefit or significant damage, if they are of a pecuniary nature, shall mean any such benefit or damage that is equal or exceeds the amount of 3,000 monthly statutory minimum wage fixed in the respective country.

top managers and executive and supervisory board members of the 10 biggest SOEs in the country, any other officials defined as politically exposed persons under the national law.

In Moldova, the AML/CFT Law defines PEPs as natural persons who have been entrusted with prominent public function at the national and/or international level, and those who served as members of governing bodies of political parties within the previous year (Art. 3). It is also elaborated that PEPs at the international level include heads of state, heads of government, ministers and their deputies, members of parliament, judges of high-level courts, members of boards of central banks, senior military officials, ambassadors, members of senior management of state enterprises and leaders of political parties (Art. 3).

Assessment of compliance

Benchmark 12.1.1.

Convictions in high-level corruption cases are among key criteria for the assessment of the effectiveness of anti-corruption policy

To comply with the benchmark, the country needed to provide materials, which prove that convictions in high-level corruption cases were included in the list of key criteria used for assessing the effectiveness of the anti-corruption policy, for example, through respective indicators included in anti-corruption policy documents. To evaluate compliance, the monitoring team considered the National Integrity and Anti-corruption Strategy (NIAS) for 2017-2020 as anti-corruption strategy and/or action plan that was in effect in force at the time of the on-site visit (See more details regarding the status of this document in PA1). This strategy does not include convictions in high-level corruption cases among criteria for assessing the policy's effectiveness.

Separately, the monitoring team found that there is no analysis of convictions in high-level corruption cases at the level of the Anti-Corruption Prosecution Office (APO) either. Moreover, APO does not collect statistics on final conviction cases in the cases they are investigating and prosecuting. The representatives of the APO explained that the competence of the APO is limited to prosecuting the cases in first instance courts. APO does not follow the case in appeal and other ways of judicial remedies. This has been raised in several other PAs dealing with enforcement of corruption crimes.

The prosecutors consider that the notion of high-level corruption is not clearly understood. One cannot say that the competence of the APO as provided by law is limited to high-level corruption; in fact, it is broader than high-level corruption.

The National Anti-Corruption Center (NAC) has an analytical department which issues analytical studies regarding the phenomenon of corruption. No study specific on high-level corruption has been produced by NAC.

Among the most recent studies published by NAC on their website there are: strategic study regarding the decisions ruled by the courts in 2020 on corruption cases; study on the profile of the offender in cases of passive, active corruption and traffic of influence, based on the courts' decisions rule in 2020; strategic analysis on vulnerabilities of corruption in relation with the state policy regarding the drug trafficking. The conclusion of the NAC study on 2020 courts decisions in corruption cases revealed that most of the conviction sentences have been ruled for trading in influence and active corruption, followed by passive corruption. Another conclusion of the study was that in 2020 the courts ruled on cases of petty corruption,

with small amounts of the bribe, while high-level corruption cases could not be found in the analysed court decisions.²¹

In sum, there is no indication that the authorities use lessons learned for the anti-corruption policy from the convictions in high-level corruption (proposed legislative amendments, administrative changes, etc.).

According to Moldova, the national legal framework does not have legal provisions enforcing the obligation to keep records according to this criteria.

Indicator 12.2. Criminal statistics on high-level corruption is published analysed and used in updating policy

Assessment of compliance

Benchmark 12.2.1.

Detailed statistics on the detection, investigation, prosecution and adjudication of high-level corruption is regularly published online and used to change policy or practice if necessary

APO does not collect statistics on final conviction cases in the cases they are investigating and prosecuting. The representatives of the APO explained that the competence of the APO is limited to prosecuting the cases in first instance courts. Thus, APO collects statistics on convictions in first instances. APO does not follow the case in appeal and other ways of judicial remedies.

APO stated that in 2019-2020 there have not been conviction decisions in high-level corruption cases.

It is fair to remind that 2020 was a year in which the activity of all the institutions was significantly limited because of the pandemic and the related lockdown measures. However, 2019 was a regular year, not affected by the pandemic. The statistical data on the criminal investigation and prosecution performed by the APO is made public in their annual activity report.

In the annual report for 2019, the APO noted that the prosecutors registered 552 cases in which they had to investigate themselves, out of which they opened investigation in 252 cases and closed 273 cases. Also, they registered 933 cases in which the criminal investigation is carried out by NAC, under the control of the APO prosecutors. Out of them, in 640 cases, the investigation was opened and 292 cases were closed. This data concerns all the criminal offenses falling under the competence of APO; no delimitation between high-level and petty corruption has been made.

²¹ Centrul National Anticoruptie "[Analiza Strategica](#)" (2021)

Indicator 12.3. High-level corruption is actively detected and investigated

Assessment of compliance

Benchmark 12.3.1.

Analytical sources of information, at least FIU reports and asset and interest declarations, are routinely used for the detection of high-level corruption

The prosecutors of APO stated that they may use various sources of information for the detection of high-level corruption cases, such as the reports/notifications of the Chamber of Accounts, of the Tax Office, of the FIU and, most of all, cases declined from other prosecution offices, or information resulted from other investigations carried out by the APO. According to Moldova, sources of information which have been used for the investigation of high-level corruption also include complaints based on different types of analytical information (e.g. the National Bank's analytical reports, the Kroll report, self-reports on published journalistic investigations, Parliamentary Committee inquiry reports, etc.).

The Moldovan authorities did not provide any official statistical information that could indicate the distribution of the cases based on the different source of information used for detection, so that the monitoring team could assess the compliance of this indicator.

However, currently there are no cases opened based on referrals from the Tax Office or other audit institutions, or from the FIU. In addition, there are no cases opened based on asset declarations or interest declarations.

According to the civil society, during the last two years, the activity of the APO decreased in quality and no high-level cases have been brought before the courts.

Benchmark 12.3.2.

All public allegations of high-level corruption were investigated or justified decisions not to open an investigation were made

During the onsite visit, the APO representatives indicated two cases of high-level corruption in which the prosecutors opened the investigation against two Members of the Parliament for corruption offenses. In one case, the MP and a former director of the state owned International Airport Chisinau have been accused of abuse of office in relation with the fraudulent concluding of a concession contract of the International Airport Chisinau in 2013. The case has been sent to court in May 2021. The second case is part of the complex case opened in 2014 by the APO, known as the "theft of the billion" case. In March 2021, an MP has been accused of participation in the organized group that contributed to the theft of funds from the banking system of the Republic of Moldova. The investigation in this case is still ongoing. The immunity of both MPs has been waived in 2021.

However, the civil society expressed constant concerns that the investigation in many high-level corruption cases opened in the previous years, including those regarding the theft of the billion is stalling, while other corruption scandals are not given proper judicial follow-up. In addition, according to the NGOs, the release from prison of some notorious politicians that have been or are investigated in high-level cases gives a

confusing message to the citizens as to the commitment to fight corruption and the independence of the prosecutorial and judicial system. These statements are further corroborated by the study “Public Authorities’ Reaction to the Facts on Public Officials’ Integrity, Described by Investigative Journalists (July 2017 – July 2019)”, prepared by the Association of Independent Press.²²

The study found that in 11 out of 26 alleged corruption cases, uncovered by investigative journalists, the state authorities did not react. In at least 3 cases, actions did not follow from the NIA. The study found that GPO, APO and NAC have been more responsive and noted that in 8 cases, they have initiated internal verifications and investigations and or opened criminal cases. It also notes that of 15 cases which have been verified or investigated - 11 have been initiated independently and 4 based on the public allegations. Of them in 7 cases verification of facts by authorities did not find sufficient facts for initiating sanctions, and in 7 other cases the verification or investigation is still on-going. Only in one case a person was found to violate Col legislation, and only one criminal case was initiated on the allegations of illicit enrichment by a prosecutor. While, the monitoring team cannot establish that the 26 cases reviewed in the study fall under the definition of high-level corruption according to the monitoring methodology, the findings contribute to the conclusion that not all public allegations of high-level corruption receive adequate response and clearly shows the need for better response and communication of such response to media and other public allegations.

Benchmark 12.3.3.

Requests of foreign jurisdictions for information or legal assistance in high-level corruption cases, if received, are executed without delay

The PG Office receives all the incoming requests of mutual legal assistance from the foreign jurisdictions. Subsequently, the PG office requests the APO to execute the requests that fall under their competence. In 2020 and 2021 the APO received and executed two MLA requests, one from Kyrgyz Rep and one from Romania.

Benchmark 12.3.4.

Requests to foreign jurisdictions for information or legal assistance in high-level corruption cases of transnational nature are made promptly and without delay

In 2020-2021, APO sent MLA requests to various countries in 7 cases. In the case of bank fraud (theft of the billion), they have sent 40 MLA requests to 18 countries. Of them, only 10 have been executed.

The APO prosecutors are currently members of two Joint Investigation Teams (JITs). One of them is concluded with Latvia and it concerns the case regarding the bank fraud. The other JIT has been concluded with Romania, at the initiative of the Romanian DNA

²² Conclusions and Recommendations of the Study “[Public Authorities’ Reaction to the Facts on Public Officials’ Integrity, Described by Investigative Journalists](#) (July 2017 – July 2019)”

Benchmark 12.3.5.

Asset recovery practitioners are routinely involved in the investigation and prosecution of high-level corruption cases

According to the law, the seizure of assets during the criminal investigation in corruption cases, with the purpose of confiscation, extended confiscation or asset recovery, is mandatory. The APO prosecutors stated that APO does not have its own Financial Investigation Unit, but instead, the prosecutors have a good cooperation with CARA.

According to the prosecutors of APO, the usual practice for them is to request CARA to carry out a parallel financial investigation, to inform the prosecutors about the results obtained and to seize the assets at the request of the prosecutor who leads the investigation.

According to the data from the 2020 annual reports of NAC and APO and the data provided by the authorities after the onsite visit, out of 1530 cases investigated by NAC and 273 cases investigated by APO, APO, NAC and CARA conducted parallel financial investigations with the application of measures to ensure the recovery of criminal assets in 61 cases of corruption at all levels. Moldova does not have separate statistical data regarding cases of high-level corruption. The figures are encouraging, having in mind that CARA is a rather young agency in Moldova and taking into consideration that not all corruption and corruption related cases require financial investigations. However, the monitoring team cannot know how many of these cases regard high-level corruption and therefore it would be difficult to draw the conclusion that asset recovery practitioners are routinely involved in high-level corruption cases.

Indicator 12.4. Liability for high-level corruption offences is effectively, independently and impartially enforced

Assessment of compliance

Benchmark 12.4.1.

There is a wide perception among the main stakeholders that the cases of high-level corruption are investigated, prosecuted and adjudicated independently and impartially without political or other undue interference

The civil society expressed constant concerns that the investigation in many high-level corruption cases opened in the previous years, including those regarding the theft of the billion is stalling, while other corruption scandals are not given proper judicial follow up. In addition, according to the NGOs, the release from prison of some notorious politicians that have been or are investigated in high-level cases gives a confusing message to the citizens as to the commitment to fight corruption and the independence of the prosecutorial and judicial system.

There are articles in the press criticizing that the investigation in the notorious high-level corruption cases takes too long, that the trials take too long and that the law enforcement agencies did not take action in relation to some of the corruption scandals revealed by the press.

Benchmark 12.4.2.

There is a wide perception among the main stakeholders that the cases of high-level corruption are investigated, prosecuted and adjudicated independently and impartially without political or other undue interference

APO does not have its own website, although according to the Transitory and Final Provisions of the Law on Specialised prosecutor's office, the official website page of APO was to be created by 31 December 2016. APO does not publish its own press releases on the cases investigated. The PG Office has an office responsible with media communication and it publishes the press releases regarding the APO cases. They can be found on the main page of the PG office website. According to the authorities, there is no communication strategy within the prosecution service.

In their answers to the questionnaire, the authorities stated that the communication made through the PGO media office usually includes the progress of the criminal investigations, and court decisions in corruption cases. Civil society disagreed and stated that the information provided (public reports or press releases) lacks substantive details.

The monitoring team did not receive sufficient information to assess whether the public is duly informed of the essential acts carried out in all the high-level corruption criminal proceedings of public interest, while observing the confidentiality of the investigation and the presumption of innocence of the investigated persons. Moreover, one of the prosecutors stated that information about a case could not be released to the press until the court reaches a final verdict. This approach is contrary to the international standards (Rec (2003)13 of the Committee of Ministers of the Council of Europe).

Finally, as mentioned under 3.2, the concerns of the civil society over the course of high-level investigations and the findings of the API study point out to the need for improved communication with the public by Moldovan authorities responsible for detecting, investigating and prosecuting high-level corruption.

Benchmark 12.4.3. – 12.4.5.

BENCHMARK	Moldova 2020	
	Total number of convictions	Per 1 million of population
12.4.3. Track record of convictions for high-level corruption	0	0
12.4.4. Track record of convictions of high-level officials who were in office at the beginning of investigation	0	0
12.4.5. Track record of recovery of corruption proceeds from abroad in cases of high-level corruption	0	0

Population of Moldova was 2.6 million in 2020 (source: <https://data.worldbank.org/country/moldova>)

Benchmark 12.4.6.

At least 50% of final sanctions for high-level corruption entail imprisonment without conditional or another type of release

The prosecutors met by the monitoring team stated that the sanctions given to the persons convicted for high-level corruption are harsh. They exemplify with the case of the former prime minister who has been convicted to 9 years imprisonment with execution in penitentiary and a fine of 3.000 units and with another case regarding a judge who received 8 years imprisonment with execution.

However, the authorities did not provide statistical information with regard to the type of sanctions applied in the high-corruption cases and the monitoring team cannot confirm compliance with the benchmark.

Benchmark 12.4.7.

A prohibition from holding public office is applied to all persons convicted for high-level corruption

The prosecutors state that in corruption cases, with the exception of trading in influence, the additional penalty of prohibition from holding public office is mandatory. Information provided under PA 9, benchmark 9.2.3, indicates that in 2020, out of 22 convictions for corruption crimes at the level of the first instance

courts, in 17 a prohibition from holding public office was applied. However, no official statistical information on the application of sanctions of prohibition from holding public office for high-level corruption have been provided by the authorities, which makes it not possible for the monitoring team to confirm Moldova's compliance with the indicator.

13 Specialised anti-corruption investigation and prosecution bodies

In Moldova, two institutions are assigned to investigate corruption offences – the National Anti-Corruption Center (NAC) and the Anti-Corruption Prosecutor's Office (APO). APO prosecutors present corruption cases in the courts of first instance, while the prosecutors from the prosecution offices attached to the chambers of appeal and the prosecutors of the General Prosecutor's Office present these cases in appeal and cassation procedures. There is no dedicated unit or body to investigate or prosecute high-level corruption. While both the last Chief Prosecutor of APO and the current Director of NAC have been selected through a transparent and competitive procedure, the report raises concerns. In the case of the Chief Prosecutor of APO, he has been suspended and two interim acting heads were appointed by the PG since then. In the case of selection of the NAC director, the key role in the selection procedure is played by a political body, the Legal and Immunities Commission of the Parliament.

Resources of the specialised investigators and prosecutors are not sufficient. In particular, in 2020 a substantial number of cases had to be reallocated from APO due to the high case-load and in order to avoid case backlogs. Towards the same point, APO prosecutors cannot present cases in appeal and cassation procedures due to limited resources. In addition, APO does not have capacity to conduct its own intelligence gathering activities. Annual reports of NAC and APO contain detailed statistics, although some information is missing, especially that which concerns high-level corruption. No external evaluation of the specialised investigative bodies is being performed and public oversight mechanisms are not in place.

There is general perception among the NGOs and the media that specialised agencies need to focus on high-profile corruption and show enforcement results in such cases. This could be achieved by limiting the competence of the APO to high-level corruption. This idea finds support among APO prosecutors as well. This may positively impact the public image of the anti-corruption specialised law enforcement bodies. The reform could also help bring the perception in the society that even the most powerful and influential persons are punished when breaking the law, which is not the case currently. Regardless, the specialised anti-corruption law enforcement bodies, especially APO, need to do more in public outreach and explaining the results of their work, as well as better communicate their decisions to close or not to open or pursue investigations of certain, especially high-profile corruption cases.

Indicator 13.1. The anti-corruption specialisation of investigators is ensured

Background

In the legal system of the Republic of Moldova, the general competence to carry out criminal investigation belongs to the bodies of the Ministry of Interior, if the law does not provide a different competence. By exception, most corruption offenses are assigned by the law within the investigative competence of the National Antic-Corruption Centre (NAC). The prosecutor has a general competence of supervising and controlling (conducting) the criminal investigation carried out by the police or other law enforcement agencies. In corruption cases, the prosecutors of the Anti-Corruption Prosecutor's Office (APO) supervises (conducts) the investigation carried out by NAC. In addition, the prosecutor has, by law, the competence to carry out the investigation themselves for certain criminal offenses as provided by the CPC and for the offenses committed by certain categories of persons, and APO prosecutors carry out investigations for the set of corruption offences.

For the purposes of this monitoring, indicators and benchmarks, concern specialised anti-corruption investigators will apply to both - the NAC and APO; indicators and benchmarks that concern specialised anti-corruption prosecutors will apply to APO.

Assessment of compliance

Benchmark 13.1.1.

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

According to the CPC, the investigation of corruption offences in Moldova falls under the competence of different bodies, in a cumbersome mechanism.

The NAC carries out the investigation for a set of 19 criminal offences as provided by Art. 269 of CPC, among which active and passive bribery, trading in influence, abuse of office, illicit enrichment, money laundering, etc.

The APO carries out the investigation for a set of 19 criminal offences (the list is not identical with the list of 19 offences provided for NAC, but most of them coincide) as provided by art. 270/1 CPC, if some conditions are met. These conditions refer to:

- a certain position of the perpetrator (public dignitaries, civil servants with leading positions, investigative officers, lawyers, managers of state-owned enterprises, etc.;
- the value of the bribe or of the damage caused by the offense exceeds a certain financial threshold.

In addition to the offences directly investigated by the prosecutors of the APO, they also supervise or control (conduct) the investigations carried out by the NAC.

Benchmark 13.1.2.

Corruption cases are not removed or only removed from the specialised anti-corruption body, unit, investigator on legally established grounds, following clear criteria for transferring of such proceedings

According to Article 531, Paragraph 3 of the CPC, a case assigned to a prosecutor can be removed and assigned to another prosecutor in a limited number of instances, explicitly provided by the above-mentioned article (the transfer, secondment, detachment, suspension or dismissal of the prosecutor; his absence; his unjustified inaction in the case or when serious infringements of the persons rights are ascertained). This provision, applicable also to the anti-corruption prosecutors, can be considered in line with the benchmark, as the criteria for removing a case are clearly and limitedly provided by the law.

A similar provision, Article 56, Paragraph 3 of the CPC, limits the possibility of the head of the law enforcement office (in our case, the head of NAC) to remove a case from one investigation officer and assign it to another (in case of transfer, secondment, detachment, suspension or dismissal or absence of the officer). The removal of cases from an investigation officer based on other grounds can be done only by motivated decree of the prosecutor (Article 56, Paragraph 4).

At the same time, the CPC provides for other possibilities to remove a case from a prosecutor. According to Art. 270 para 5 of the CPC, the PG and his/her deputies may order, by motivated decree, for the criminal investigation falling within the competence of one prosecutor to be carried out by another prosecutors' office.

The prosecutors from the APO consider that the competence of the APO as provided by the CPC is too broad, compared to the resources they have. It encompasses not only the high-level corruption, but also many petty corruption offences that are investigated by NAC under the supervision (conduct) of the APO prosecutors. Thus, in 2019 the APO managed 600 corruption cases in which the investigation should be carried out by the prosecutors and had under supervision/conduct another 700 cases investigated by NAC. The workload being too heavy, in 2020, at the request of NAC, the PG removed 140 cases of petty corruption from the APO/NAC and assigned them to local prosecution offices, in order to reduce the backlog from the specialized anti-corruption law enforcement bodies. At present, APO investigates 150 cases and conducts/supervises the investigation carried out by NAC in 400 cases.

The civil society also believes that the competence of APO is too large and it should be streamlined to high-level corruption in order to bring more efficiency in the fight against corruption.

As it was explained to the monitoring team, the removal of 140 from the APO in 2020 was justified in this case by objective reasons.

However, the monitoring team is of the view that Article 270, Paragraph 5 of the CPC, when applied in relation to APO cases, is too broad and un-circumstantiated and thus it might endanger the independence of the corruption investigations. The legal provision giving the PG such broad and un-circumstantial possibilities to remove a case from any prosecutor might endanger the independence of a corruption investigation. Similar concerns are expressed in respect of Article 56, Paragraph 4 of the CPC when applied in relation with cases falling under the competence of NAC. In both situations, a corruption case might be removed from the anti-corruption investigator or prosecutor by motivated decree of the prosecutor or the Prosecutor General, but the law does not provide for specific grounds or criteria.

In order to preserve the autonomy of the specialized anti-corruption investigation body and to protect it from potential abusive transferring of sensitive corruption cases, it is preferable that its competence is strictly provided by the law, and the possibilities to remove a corruption case from that body is provided only in exceptional circumstances, limitedly described in the law and with the consent or at the request of the anti-corruption body.

Benchmark 13.1.3.

A specialised task force, unit or body to investigate and/or prosecute high-level corruption is established within the criminal justice system and there are no cases of breach of its jurisdiction

The benchmark requires exclusive investigative and or prosecutorial jurisdiction for high-level corruption cases in law and ensuring strict observance of such jurisdiction in practice, i.e. such investigators and/or prosecutors should not investigate and/or prosecute other offences.

The concept of the APO is appropriate for a mandate of investigating and prosecuting high-level corruption cases. The APO is competent to deal with corruption offences committed by a category of persons that can be considered high-level officials and for corruption offences that have other elements granting them the title of high-level corruption (value of the bribe, value of the damage caused). However, the APO competence is not limited to those offences. The law adds that APO is competent to conduct (supervise) the investigation carried out by NAC. NAC, in its turn, has by law a broader competence, not being limited by a certain category of perpetrators, nor by a financial threshold. Thus, the APO cannot be considered body to investigate and/or prosecute high-level corruption.

Both the prosecutors and the civil society expressed the wish to have a reform that would amend the law and streamline the competence of APO to high-level corruption cases and thus to allow a better use of the APO resources. Local prosecutors with the support of the police can very well investigate the petty corruption cases. The APO prosecutors will have then to focus only on the most complex and relevant cases and show independence in their investigations. Such a reform could help build the perception in the society that even the most powerful and influential persons are punished when breaking the law.

Indicator 13.2. The anti-corruption specialisation of prosecutors is ensured

Assessment of compliance

Benchmark 13.2.1.

Prosecution of corruption offences is assigned in the legislation to a dedicated body, unit or a group of prosecutors, which specialise in combatting corruption

The benchmark requires that there is a dedicated body or unit prosecuting corruption cases. This presumes all stages of criminal proceedings, including the appeal and cassation procedures.

In Moldova, Art. 320 (1) of the CPC states that the prosecutor who conducts criminal investigation shall participate in a case hearing in the first instance. According to the authorities, the APO prosecutors participate in the first instance hearings, presenting the accusation in the cases indicted by them. They

have the legal capacity to participate also in the appeal and cassation procedures, but in practice, this does not happen for lack of resources reasons. However, allegedly, the APO prosecutors and the prosecutors from the prosecution offices attached to the chambers of appeal and from the PG office who participate in these procedures communicate about the case.

In order to increase the efficacy in conducting the corruption case proceedings and to maintain the control on the case during the entire criminal procedure, it would be advisable to ensure the participation of the APO prosecutors throughout the judicial proceedings. This would also bring Moldova in line with the requirements of this benchmark.

Benchmark 13.2.2.

High-level corruption cases are presented in court by the specialised anti-corruption prosecutors

As described above, the APO prosecutors present in court, in the first instance procedure, the high-level corruption cases, as well as the other corruption offences falling under the APO competence. However, the same issue raised under Benchmark 13.2.1 persists. This Guide to this benchmark explains that if the monitoring team comes across a high-level corruption case presented in court by prosecutors other than the specialised prosecutors, the benchmark will not be considered met. Taking into consideration that corruption cases, including those covering high-level corruption, can be presented in the appeal and cassation procedures by other prosecutors, the benchmark is currently not formally met.

Indicator 13.3. 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

Moldovan authorities only state that the selection and appointment of the current head of APO does not differ from the procedure of selection and appointment of any other prosecutor (meaning merit based by competition). The procedures for the selection of prosecutors are provided by Arts. 19-25 of Law 3/2016, explained in AP5.

Assessment of compliance

Benchmark 13.3.1.

The current head of the specialised anti-corruption investigative body or unit was selected through a transparent and competitive selection procedure, using clear criteria based on merit

To comply with the benchmark, the country has to show that the current head was appointed:

- through a transparent procedure in which the legislation regulates main steps in the process of selection and appointment and provides for publication of information on the different steps of the

process to inform the public. Transparency can be ensured by publishing the information about the process and the results online, broadcasting parts of the selection process;

- competitively, in that vacancies were published online and available to the general public and that any eligible person can participate in the selection. The procedure may be found to be not competitive if e.g. insufficient time was provided to apply, or the vacancy was published in a way to limit possible candidates;
- using clear criteria that are foreseeable, not ambiguous and not allowing excessive discretion of the decision-making body;
- based on merit, with decision on shortlisting candidates and winning candidates made because of their merit (experience, skills, integrity) and not no other considerations, like political or personal preferences, nepotism, etc.

The benchmark looks both in law and in practice. As explained earlier, both APO and NAC have to be in full compliance for the benchmark to be met.

APO: The legislation regulates main steps in the process of selection and appointment and provides for publication of information on the different steps of the process to inform the public. In particular, in the procedure, two Boards set up under the aegis of SCP (the Board for the performance evaluation of the prosecutors and the Board for the selection and career of prosecutors),; the SCP and the PG are involved. The interview before the SCP is broadcasted. The procedure for appointing the chief prosecutor of APO follows the same procedure for selection and career applied for all the positions in the Prosecution Service. It is a competitive procedure. Criteria are stipulated in Art. 20 of the Law on organization of the prosecution service and are clear (more information can be found under PA 6). Moldovan authorities noted that when SCP adopts the decision on the organization organisation of the competition, it may establish additional selection criteria.

The current chief prosecutor of APO was appointed in 2016 on the basis of a competition organized by the Superior Council of Prosecutors (SCP) according to the procedure provided by the Law on organization of the prosecution service. However, he was suspended in December 2019 from this position, as he is investigated by the PG office in a corruption case. Moreover, according to the media, his mandate expired in 26.04.2021.

Currently, the APO is led by an interim chief prosecutor, appointed by order of the PG. Right after the suspension of the former chief prosecutor of APO, the PG appointed an interim chief prosecutor from among the prosecutors of APO. In June 2021, he was removed from this position and another interim chief prosecutor, former member of the SCP, was appointed by order of the PG.

The vacancy of a post is a situation that might happen for various reasons, as well as situations such as the suspension of a chief prosecutor, which impede the appointment of a full-fledged chief prosecutor. However, in order to ensure the institutional stability and independence of the specialized anti-corruption body, it is important that the interim periods are maintained to a minimum and a transparent and merit based competition for the appointment is organized with celerity.

NAC: The current director of NAC was appointed by the majority vote of the Parliament in July 2019 on the basis of the competition organised by the Parliamentary Commission on Legal Appointments and Immunities in line with Art. 8 of the Law 1104/2002 on National Anti-corruption Center, as amended in 2020. A set of clear criteria is identified in Art. 20 of the same law, which was further supplemented by additional position-specific criteria adopted by the Regulations on the conduct of the competition for the position of the Director of NAC, from 26 June 2019. The Commission itself is made up of MPs and is subordinate to the Parliament.

Benchmark 13.3.2.

An independent expert selection committee played a key role in the selection of the head of the specialised anti-corruption investigative body or unit

“Independent expert selection committee” for the purposes of this benchmark means a body specially designated for the selection of the head with the members not subordinated to the agency itself or a political body/person. Committee’s members should be experts in the area of criminal justice, anti-corruption or other relevant areas and should not be public officials.

“Key role” means that these members were not just nominal participants of the process but had the possibility to ask questions and influence the decision, i.e. even if the final appointment is made by the president, parliament, etc. – it is based on the recommendation or a shortlist of candidates prepared by this committee.

Both APO and NAC have to be in full compliance for the benchmark to be met.

The procedure for appointing the chief prosecutor of APO follows the same procedure as for selection and career applied for all the positions in the Prosecution Service. As explained earlier, in the procedure, two Boards set up under the aegis of SCP (the Board for the performance evaluation of the prosecutors and the Board for the selection and career of prosecutors) and the SCP are involved in the selection with subsequent appointment by the PG. In principle, the Boards and SCP can qualify to meet requirements of the benchmark, as being bodies specially designated for the selection, not subordinated to the agency (either APO or PG) or a political body/person. They are composed of experts in the area of criminal justice and other relevant areas. The boards and the SCP played a key role in the selection of the last chief prosecutor of APO.

The director of NAC is selected based on a competition organized by the Legal and Immunities Commission. The Commission is one of the 11 standing committees of the Parliament, which is directly subordinated and responsible in front of the Parliament. It has a broad mandate but is specifically mandated with organisation of the competition for the selection of the NAC Director. It is composed of 11 MPs and its statute is established on the basis of the Regulation of the Parliament and the Decision 48-XVIII from 29 October 2009. The Commission invites as observers representatives of the civil society and of the academia. While the role of the Commission might have contributed to a more objective selection process, the Commission does not meet the requirements of the benchmark of an independent expert selection committee.

Benchmark 13.3.3.

There is a clear and transparent procedure for dismissal of the head of the specialised anti-corruption investigative body or unit based on grounds that exclude political or other undue interference and there were no cases of dismissals outside of such procedure

The chief prosecutor of APO can be dismissed before the end of the mandate according to the criteria provided by art. 58 of the Law on organization of prosecution service; the same criteria apply as to all the prosecutors and the PG. Among the criteria there are: submitting the resignation; the disciplinary sanction of demotion; a decision of incompatibility remained final; not submitting the assets declaration; a decision

on conflict of interests remained final, etc. These criteria appear to be objective and, if applied correctly, they should exclude political or other undue interference.

The dismissal is ruled by order of the PG. the order of the PG can be challenged in court.

In the case of the former chief prosecutor of APO, he was not dismissed, but suspended. See the analysis on item 3.1

The director of NAC can be dismissed before the end of the mandate by ascertaining that he or she does not fulfil the requirements for appointment, or if he or she obtains a negative result at the professional integrity testing performed, according to the law, by the Service for Intelligence and Security.

The decision to dismiss the director of NAC is taken by the Parliament with the vote of the majority of elected deputies, at the initiative of at least 20 deputies.

Benchmark 13.3.4.

The current head of the specialised anti-corruption prosecutorial body or unit was selected through the transparent and competitive selection procedure, using clear criteria based on merit

As the agency in question is APO, see analysis under the Benchmark 13.3.1.

Indicator 13.4. The staff of the specialised anti-corruption investigative body is impartial and autonomous from external and internal pressure

Assessment of compliance

Benchmark 13.4.1.

The assignment and re-assignment of cases among specialised anti-corruption investigators is based on clear and published rules that are set in the legislation and ensure impartiality and autonomy from external and internal pressure

The assignment and reassignment of cases in the APO is done in the same manner as in the rest of the prosecution service. Please see relevant analysis under PA6, Benchmark 6.6.1.

In NAC, the cases are assigned by the director of NACdirector of NAC assigns the cases to the chiefs of the main departments and these chiefs assign the case to individual investigators, depending on their workload. In that sense, the provisions of art. 56 para (20), (21), 3 and (4) CPC apply, according to which the director of NAC assigns the cases to the investigative officers and could remove a case from one officer and assign it to another one in the cases provided by the law. A case might be reassigned to another officer in the situation of transfer, secondment, detachment or dismissal of the previous officer or when the latter is absent and the work in the case is urgent. Any other cases of reassignment can be done only on the basis of a motivated ordinance of the prosecutor.

Also, according to the representatives of NAC met in the on-site visit, for complex cases, groups of investigators are formed, working under the leadership of the prosecutor. The prosecutor can have a say in the appointment of investigators.

No information on practices of reassignment of cases has been provided to the monitoring team. The representatives of NAC, met at the on-site, stated that in practice the cases remain with the same investigator or group of investigators initially appointed per case

Benchmark 13.4.2.

Specialised anti-corruption investigators routinely use the right to challenge orders from superiors through a judicial or another procedure

While legal provisions exist, both APO and NAC representatives denied the existence of a routine to challenges orders from their superiors.

Benchmark 13.4.3.

There is a wide perception among the main stakeholders that the specialised anti-corruption investigative body or unit operates independently and impartially without political or other undue interference in its work

The perception expressed by the representatives of the civil society, the international organizations and those gathered from the press articles is that, currently, the specialized anti-corruption investigative bodies do not convince the public with their independence and impartiality. Many notorious corruption scandals are allegedly not given proper follow-up. The perception that the monitoring team could grasp is that several interest groups, political and economic, find their way to influence the decisions taken in investigating or stalling the investigations of the high-level corruption cases.

Moreover, based on a survey among the judges, prosecutors, and lawyers conducted in October-December 2020, when asked about the most corrupt prosecutor's office, representatives of the three professions indicated the Anti-Corruption Prosecutor's Office, followed by the Prosecutor's Office for Combating Organized Crime and Special Cases (POCOCSC).²³

²³ Survey "[Perception of judges, prosecutors and lawyers on justice reform and fight against corruption](#)", Legal Resources Centre from Moldova (LRCM), December 2020

Benchmark 13.4.4.

There is a wide perception among the main stakeholders that the specialised anti-corruption prosecutors operate independently and impartially without political or other undue interference in their work

As anti-corruption prosecutors are not separated from prosecution investigators, this benchmark is assessed based on findings for benchmark 13.4.3.

The perception expressed by the representatives of the civil society, the international organizations and those gathered from press articles is that, currently, the anti-corruption prosecution office does not convince the public with its independence and impartiality. Many notorious corruption scandals are allegedly not given proper follow-up.

According to the civil society, the anti-corruption system needs key independent top prosecutors who can boost the independent corruption investigations and motivate the prosecutors and investigators.

The specialized prosecution offices, APO and POCOCSC, independent by law, are seen as having too strong dependency on the PG. The public currently appears to see more fights between prosecutors than results in the fight against corruption. The representatives of the judiciary, prosecution and defence lawyers also named these two offices as the most corrupt in their view.

Indicator 13.5. The specialised anti-corruption investigative and prosecutorial bodies have adequate human and financial resources

Assessment of compliance

Benchmark 13.5.1.

Specialised anti-corruption investigative body or unit has the number of staff and resources sufficient to carry out functions within its mandate

Both APO and NAC have to be in full compliance for the benchmark to be met.

NAC: The NAC currently employs 330 members of staff, spread in all the geographical divisions. The general directorate for combatting corruption has 37 investigators. NAC has its own department providing technical assistance in the corruption investigations that carries out wiretapping, covert operations, surveillance, financial examinations, handwriting examinations, etc. NAC provides the prosecutors of APO with technical assistance support in investigations through this department.

In 2019, the number of cases of NAC was 1891 and it has been reduced by 50% by the order of PG re-distributing part of the cases to the prosecutors other than those from APO. In 2020, 1530 criminal cases were in the management of the criminal investigation officers of NAC, which represents a further decrease compared to the previous year by 19.2%.

APO: The APO employs 50 prosecutors, 15 investigative officers, 29 consultants and 8 specialists. The investigative officers of APO are not properly equipped. APO has access to some databases, among which the population, the real estate, vehicles. However, APO does not have a technical assistance unit; it relies on the equipment of NAC and of the intelligence service.

In 2019, the number of cases within APO was reported at 600 cases and had under supervision/conduct 700 cases investigated by NAC; the workload per prosecutor appears too high and was deemed so by the PG. As described earlier under benchmark 13.1.2 of this PA, this resulted in the redistribution of the 140 petty corruption cases to the local prosecution offices in 2020. This however represented a temporary solution to the insufficiency of staff. At present, APO investigates 150 cases and conducts/supervises the investigation carried out by NAC in 400 cases.

The monitoring team believes that in order to ensure an effective, efficient and independent operation of the anti-corruption prosecutors, their competence should be streamlined to high-level corruption cases and they should be provided with legal and technical possibilities to carry out their own technical operations.

Benchmark 13.5.2.

There is a sufficient number of specialised anti-corruption prosecutors to ensure prosecution of corruption cases

See analysis under Benchmark 13.5.1.

Benchmark 13.5.3.

The funding received by the specialised anti-corruption investigative body or unit is sufficient to ensure its autonomy

The approved budget of NAC in 2020 was of 124 800.2 lei and executed budget constituted 119 084 lei that was considered reasonable by the representatives of the Centre interviewed by the monitoring team.

The figures on the budget of APO in 2020 were not provided to the monitoring team. However, any shortages in resources and or technical capabilities would contribute to the negative opinion in regards to sufficiency of funding to ensure autonomy. In particular, this is the case regarding APO's dependence on the equipment of NAC and of the intelligence service; as well as dependence on staff, i.e. other prosecutors, as demonstrated by 2019 reallocation of cases.

Benchmark 13.5.4.

The level of remuneration of the specialised anti-corruption investigators is fixed in the law and is sufficient to ensure their independence and reduce the risk of corruption

The level of remuneration of specialised anti-corruption investigators (in NAC and APO) is fixed in the law.

The salary of a NAC investigator is a 700-900 euro higher than the salary of a police officer. The salaries of the APO prosecutors are 20-25% higher than those of the regular prosecutors. NAC and APO representatives did not express concerns with the level of remuneration.

Indicator 13.6. The specialised anti-corruption investigative body has necessary powers, investigative tools and expertise

Assessment of compliance

Benchmark 13.6.1.

Specialised anti-corruption investigative body or unit has powers, expert and technical capacity to conduct analytical work, financial investigations and covert operations, including wiretapping

To ensure the integrity, independence and effectiveness of anti-corruption investigations, the benchmark requires that listed powers and capacity be granted directly to the specialised body, unit or staff both in the legislation and in practice. To comply with this benchmark, the specialised anti-corruption investigative body or unit should have powers and expert/technical capacity to conduct: analytical work; financial investigations; covert operations, including wiretapping. Relevant powers should be clearly spelled out in the legislation and it should be possible to apply them in practice.

According to the information received during the on-site visit, it results that APO does not have a technical assistance unit; it relies on the equipment of NAC and of the intelligence service. 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 provides the prosecutors of APO with technical assistance support in investigations through this department.

See analysis under Benchmark 13.5.1.

Indicator 13.7. Work of the specialised anti-corruption prosecutors and anti-corruption investigative body or unit is transparent and audited

Assessment of compliance

Benchmark 13.7.1.

Periodic, at least annual, reports containing detailed statistics related to the work of the specialised anti-corruption investigators and prosecutors, including information on the outcomes of cases are published online

To meet the benchmark, at least the following statistical data should be available annually for the work of the specialised anti-corruption investigators and prosecutors: (1) number of registered criminal proceedings/opened cases of corruption offences: by sources of detection, and among them, high level

corruption; (2) number of cases in which charges were brought and sent to court, among them, high level corruption; (3) number of terminated investigations: by ground for termination, and among them, high level corruption; and (4) number of requests to apply covert investigative techniques: by type of measure, among them how many were granted and how many denied Information on outcome of cases, as a minimum should include information on high-profile cases.

Annual reports containing information about the activity performed and statistical data related to that are published by NAC on the website of the Center. APO does not have its own website, although according to the Transitory and Final Provisions of the Law on Specialised prosecutor's office, the official website page of APO was to be created by 31 December 2016. Annual reports containing information about the activity performed and statistical data related to that are presented by the APO to the PG. The PG includes a summary of this report in the annual report of the PG Office and publishes it on the website of PG office.

NAC annual report for 2020 includes most information required to meet the minimum standard, such as number of detected corruption cases (621 cases) with indication that 463 of them have been detected through NAC's operative activities, although other sources of detection are not mentioned; the number of opened criminal investigations into corruption (546); number of cases in which charges were brought and sent to court (170); number of terminated cases (347) and grounds for their termination. No information on the number of requests to apply covert investigative techniques or no information on high-level corruption cases is provided in the report. Similarly, the section of the GPO report for 2020 on APO does not provide information in regards to high-level corruption.

Additionally, in order to increase the transparency of the work of the APO and the public oversight on its activity it would be recommendable that APO develops its own webpage and publishes on a regular basis information related to its activity on such a webpage.

Benchmark 13.7.2.

External performance evaluation of the specialised investigative body or unit by an independent expert committee (formed by professionals, who are selected through a transparent procedure based on merit) is conducted regularly against a defined set of criteria and its results are published

There is no external performance evaluation of the activity of APO, outside the hierarchical oversight of the PG.

NAC is led by a collective Board. The following people are members of the Collective Board: NAC director, the deputy directors and chiefs of sections, the chief prosecutor of APO, the president of the National Integrity Commission, a representative of the Parliament, a representative of the Government, a representative of the trade union of the Centre, a representative of the civil society, a representative of the Civil Council. This Board approves regulations and activity plans of the Centre as well as its annual reports. However, the NAC Board cannot be qualified as an external audit body, therefore it cannot fulfil the requirements of this indicator

Indicator 13.8. Specialised anti-corruption investigators and prosecutors are held accountable

Assessment of compliance

Benchmark 13.8.1.

All public allegations of corruption perpetrated by the specialised anti-corruption investigators have been thoroughly investigated, with justified decisions taken in the end and made public

While the civil society representatives opined that there is a lack of transparency on such cases and that related decisions are not made public unless the information is leaked or there is a public hearing. However, the monitoring team was not made aware and could not itself find any specific cases of public allegations of corruption perpetrated by the specialised anti-corruption investigators from NAC or APO, which have not been properly investigated.

Benchmark 13.8.2.

All public allegations of corruption perpetrated by the specialised anti-corruption prosecutors have been thoroughly investigated, with justified decisions taken in the end and made public

Similarly to Benchmark 13.8.1., the civil society representatives opined that there is a lack of transparency on such cases and that related decisions are not made public unless the information is leaked or there is a public hearing.

There have been allegations of corruption offenses committed by the former chief prosecutor of APO and by another prosecutor of APO. They are being investigated and the representatives of the civil society and other non-governmental stakeholder did not express their views in regards to thoroughness of these investigations. Due to the general climate of mistrust in the independence of the law enforcement and judicial system, it is difficult for the public to form a clear opinion on these cases. Therefore, it is important for these cases to be solved in a reasonable time, with the observance of the rules of a fair trial, and that the public is duly informed with the essential progress elements and outcome of the procedure, according to the international standards.

Benchmark 13.8.3.

Specialised anti-corruption investigative body or unit has functioning mechanisms for public oversight, such as public councils, which include key stakeholders selected on clear criteria and through a transparent procedure.

There are no functioning mechanisms for public oversight over NAC and APO.



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