OECD Public Governance Reviews

OECD Integrity Review of Costa Rica

SAFEGUARDING DEMOCRATIC ACHIEVEMENTS

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BETTER POLICIES FOR BETTER LIVES

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Foreword

Costa Rica enjoys a deeply rooted democratic tradition. This legacy of strong checks and balances and institutions is reflected in several socio-economic and governance indicators, where the country typically performs better than the regional average.

However, Costa Rica has not escaped major corruption scandals over the past decades, sometimes involving the highest authorities of the country. Even though cases have been detected and prosecuted, they revealed weaknesses in some areas of public governance that could have helped prevent corruption. Furthermore, organised crime has increased, bringing with it greater risks of corruption and the undermining of public institutions. Together, these integrity risks could endanger the socio-economic progress of Costa Rica and undermine trust in government.

With the aim of going beyond effective enforcement and work towards a proactive culture of public integrity, Costa Rica asked the OECD to carry out an Integrity Review in a number of priority areas. Financed by the European Commission, the Integrity Review analyses the strategic focus and governance of the country's institutional framework on public integrity. It looks at how the various integrity actors co-ordinate and how integrity measures are implemented throughout the public sector. It also reviews the recently adopted National Strategy for Integrity and Prevention of Corruption (ENIPC), a milestone towards a coherent integrity system.

In addition, the Integrity Review looks into three more technical areas: the framework for preventing and managing conflict of interest, the disciplinary regime and measures to ensure transparency and integrity in political decision making, and in particular, lobbying.

This report is part of OECD's work to help countries effectively implement the *OECD Recommendation on Public Integrity.* The recommendations provided in this Integrity Review of Costa Rica inform the national dialogue on the next steps in implementing the ENIPC, on the development of a National Integrity Policy and on potential priorities of the newly elected Government.

The report was reviewed by the OECD Working Party of Senior Public Integrity Officials (SPIO) and approved by the Public Governance Committee on 6th of July 2022 and was prepared for publication by the Secretariat.

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In addition, the OECD carried out four virtual focus groups: With responsible officials for disciplinary measures, with internal auditors, with Institutional Commissions on Ethics and Values and with representatives from the civil society and academia. The OECD further thanks Carolina Souto Carballido, from the Office of the Comptroller General of the Union of Brazil (Controladoria Geral da Uniao, CGU) for peer-reviewing chapters, as well as the peers facilitated by the OECD who participated in webinars: Liliana Caballero (Colombia), Daniella Carrizo (Chile) and Carolina Souto Carballido (Brazil), or in bilateral exchanges with Costa Rica to exchange experiences and challenges in relation to the development of national integrity strategies: the National Anticorruption Secretariat of Paraguay (*Secretaría Nacional Anticorrupción*, SENAC) and the Public Integrity and Transparency Commission of Chile (*Comisión de Integridad Pública y Transparencia*).

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Executive summary

Costa Rica is the longest standing democracy in Latin America. Overall, the country is displaying good results in the area of public governance, integrity and corruption compared with other countries in the region and with the OECD average. Nonetheless, Costa Rica recently faced several high-level corruption cases and there is a need to consolidate democratic gains, safeguard trust in government and build economic resilience. While the country is already taking action against impunity, investments in corruption prevention and strong insitutions will be important to effectively manage integrity risks.Establishing and continuously improving a coherent and comprehensive integrity system will help maintain democratic stability and economic prosperity.

Ensuring a co-ordinated and coherent public integrity system

Costa Rica currently lacks a strategic framework to ensure co-ordination among all major integrity actors. While the recent National Strategy for Integrity and Prevention of Corruption (ENIPC) highlighted the benefit of such co-ordination, it also exposed challenges with respect to achieving a more institutionalised co-operation. Furthermore, a coherent implementation of integrity standards is difficult because of different levels of autonomy and independence across branches and levels of government and between entities within the public administration, which is divided into the central, institutional and territorial levels.

- Costa Rica could establish a permanent co-ordination commission involving key stakeholders and taking a whole-of-society approach to counter corruption. Technical discussions could take place in two sub-commissions, on prevention and on enforcement. The political and technical steering of the commission could be ensured by involving the President of the Republic and by assigning the Technical Secretariat of the commission to the Attorney for Public Ethics.
- The country could promote the mainstreaming of integrity policies into the whole public administration by strengthening in particular the Institutional Commissions on Ethics and Values (CIEV) and the National Commission of Values (CNEV).

Grounding the National Integrity and Corruption Prevention Strategy (ENIPC)

The ENIPC is an important step towards a resilient and strong integrity system in Costa Rica as it provides a long-term vision built on a broad consensus. However, the ENIPC currently lacks clarity with respect to the implementation, monitoring and evaluation of the activities it proposes.

- Costa Rica, through its Ministry of National Planning and Economic Policy (MIDEPLAN), could ensure that integrity is included in the National Development Plan 2022-2026, prioritising the commitment to improve co-ordination amongst actors of the integrity system and the open and participative development of the National Anti-corruption Policy, as prioritised by the ENIPC. In addition, Costa Rica could ensure effective monitoring and evaluation of the ENIPC and future integrity policies.

Strengthening conflict of interest management

Costa Rica's legal framework on managing conflict of interest is fragmented, making it difficult for public officials to know what measures apply to them. Only blanket prohibitions and sanctions are provided. In addition, there is no clear definition of what is a conflict of interest, which has undermined the development of an overarching system to prevent and manage conflict of interests with clear institutional responsibilities.

- Costa Rica could strengthen its integrity regulations as the basis for managing conflict of interest, including the unification of the relevant legislation and standards into one cohesive regime and including regulations for pre- and post-public employment.
- Similarly, the country would benefit from establishing an overarching system for the prevention and management of conflict of interest.

Strengthening transparency and integrity in decision-making

Costa Rica currently lacks the necessary guardrails to ensure that public decision-making processes are transparent and shielded against undue influence.

- Costa Rica could adopt a strong, effective and resilient framework for lobbying and influence activities, ensuring transparency on all efforts to influence the policy-making process across all branches of government. This framework should include regulations for both public officials and all interest groups influencing the government.
- Costa Rica could also adopt binding rules for the selection process of advisory or expert groups, and promote transparency on what the outcomes are, how they have been dealt with and how they are incorporated in the resulting decision.
- Costa Rica could strengthen its existing rules on transparency and integrity in election processes by specifying contribution and spending limits and adopting regulations on online media advertisement.
- The current system for access to information remains incomplete without a stand-alone access to/freedom of information law applicable to the whole public sector. Costa Rica would also benefit from adopting a law on citizen participation.

Developing a coherent disciplinary system

Costa Rica's legal and institutional framework for disciplinary enforcement is highly fragmented in relation to the procedures applicable across different categories of public officials and entities and the description of the offences set out in various regulations. In addition, there is no central guidance on disciplinary matters that would ensure a uniform implementation of rules and processes across the public sector. These shortcomings lead to inconsistencies that undermine the effectiveness and, ultimately, the fairness of disciplinary enforcement mechanisms due to the resulting lack of legal certainty.

- Costa Rica could consider developing a set of common disciplinary rules to streamline its overall disciplinary framework across the public sector and ensure fairness, clarity and a coherent level of disciplinary accountability.
- The rules should seek to guide entities in a harmonised implementation of the applicable legal framework. This initiative could be further supported by increasing the capacity of officials responsible for disciplinary proceedings through specialised training on disciplinary matters.
- Costa Rica could mandate the MIDEPLAN to issue overall disciplinary enforcement policies, including the development of centralised guidance to entities. Similarly, and with the goal of improving the uniform application of disciplinary rules based on guidance provided, the country would benefit from introducing criteria for assigning disciplinary responsibilities to a specific function within entities.

1 Ensuring a co-ordinated and coherent public integrity system in Costa Rica

This chapter provides recommendations on how Costa Rica could improve the governance of integrity policy making and implementation. There is a need to articulate and co-ordinate key integrity actors to promote co-operation and the mainstreaming of integrity policies into the whole of government, including the decentralised public administrations. While the recent National Strategy for Integrity and Prevention of Corruption is a milestone towards a comprehensive integrity system, the country needs a permanent integrity policy co-ordination mechanism. In addition, Costa Rica could further build on some successful experiences and strengthen the implementation of the ethics management model.

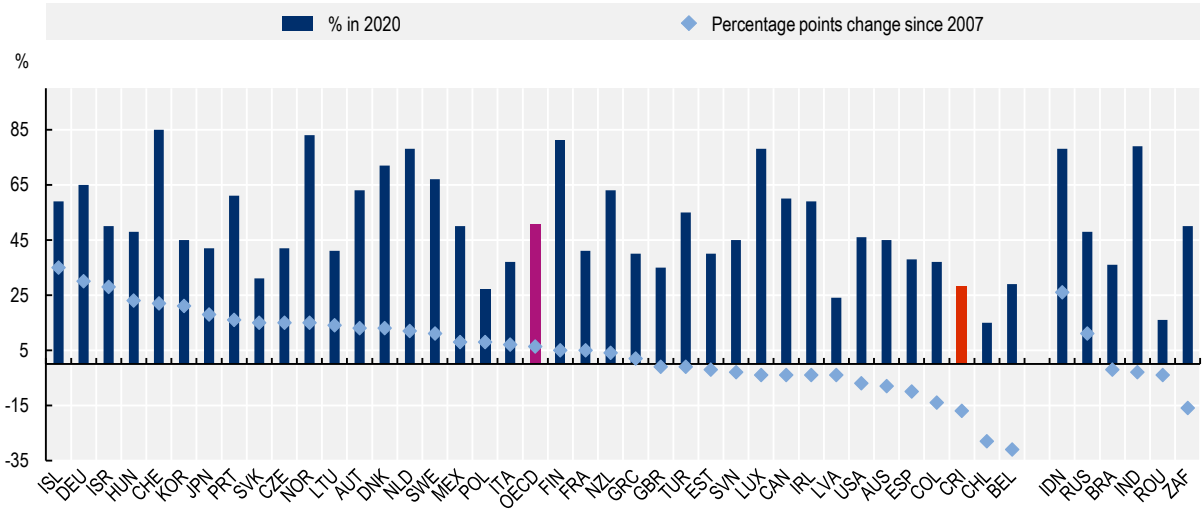
Introduction

Costa Rica is amongst the oldest and most stable democracies in Latin America. The adoption of a new constitution in 1949, after a civil conflict in 1948, renewed the bases for the country's political and economic development. It made the state a key player, entrusting it with the fulfilment of key social, economic, and (later) environmental rights, while maintaining important areas of the economy, like banking, electricity and telecommunications, as state monopolies. It also entrusted the state with the administration of health, education and housing, and spawned a network of autonomous institutions (BIT, 2020[1]). Compared to the region, there are more and stronger political, legal and administrative checks on the executive branch, developed during the latter decades of the 20th century. Costa Rica also saw a major expansion of the recognition of the rights of the population and a strengthening of mechanisms to safeguard and protect them (Vargas-Cullell et al., 2004[2]).

The country is displaying good results in the area of public governance, integrity and corruption compared with other countries in the region and with the OECD average. In 2021, Costa Rica scored 8.12 out of 10 in the Index of Public Integrity by the European Research Centre for Anti-Corruption and State-Building (ERCAS). This score is higher than the average for both Latin American countries and OECD countries (ERCAS, 2021[3]). The 2021 Corruption Perception Index (CPI) shows Costa Rica performing well (58/100) in comparison with Latin American and Caribbean (LAC) averages (43/100) and only slightly below OECD average (67/100) (Transparency International, 2021[4]). Petty corruption is significantly lower in Costa Rica than in other LAC countries, with only 7% of the citizens reporting to have paid a bribe to access public services in Costa Rica, versus an average of 21 % for Latin America and the Caribbean (Transparency International, 2019[5]). In the recent 2022 Capacity to Combat Corruption Index, Costa Rica surpassed Chile for the first time to rank second behind Uruguay (Americas Society, Council of the Americas and Control Risks, 2022[6]).

However, the country faces a growing need to consolidate the democratic gains, safeguard trust in government and build economic resilience. Similar to other countries, Costa Rica today is under pressure to deliver improvements in the quality of people's lives, while global recession and economic inequality are rising. Many new challenges threaten economic and democratic stability. Amongst those challenges are the mitigation of the economic effects of COVID-19, the need to strengthen fiscal sustainability, to maintain low-carbon development and to strengthen macroeconomic stability (CABEI, 2020[7]). In fact, as shown in Figure 1.1, Costa Rica showed an important drop in confidence in national government. Between 2007 and 2020, trust dropped by 17 percentage points (OECD, 2021[8]).

Figure 1.1. Confidence in national government in 2020 and its change since 2007



Source: Gallup World Poll, 2020, (OECD, 2021[8]).

StatLink https://stat.link/n2bvfr

Furthermore, a recent survey found that the COVID-19 pandemic has amplified integrity challenges for businesses in emerging markets, including Costa Rica. The survey showed that 63% of global respondents in emerging markets say it is difficult for organisations to maintain standards of integrity during difficult market conditions (EY, 2021[9]). Furthermore, Costa Rica has traditionally been perceived as a bastion of security in Central America. In recent years, however, the country has experienced record levels of violence, which authorities have blamed on its growing role as a drug transhipment point. Local crime groups are becoming more sophisticated and now pose a security threat for authorities as they become increasingly involved with transnational criminal organisations expanding their operations in Costa Rica, which typically cause corruption and instability (CrimeInsigth, 2019[10]). In 2018 and 2019, protests against a tax reform and an anti-union law shook the country, and in 2020, the government's plans to strike a loan deal with the International Monetary Fund sparked renewed unrest (Freedom House, 2021[11]). Political reconfigurations have also affected stability; the historical dominance of the National Liberation Party (*Partido de Liberacion Nacional*, PLN) and the Social Christian Unity Party (*Partido de Unidad Social Cristiano*, PUSC) has waned in recent years, as newly formed parties have gained traction, leading to the collapse of the traditional two-party system. In 2018, seven parties won seats in the legislative elections. This has fragmented the electoral playing field and increased electoral volatility (Molina, 2021[12]; Freedom House, 2021[11]).

Finally, no country is immune to violations of integrity and corruption remains one of the most challenging issues facing governments today. In Costa Rica, recent investigations into alleged bribe payments by construction companies to officials of the National Roads Council (*Consejo Nacional de Vialidad*) with the intention of being awarded public works projects have evidenced existing vulnerabilities. They showed that the problem goes beyond the public sector and involves high-level executives in the private sector (case known as the *"Cochinilla Case*") (LaPrensa, 2021[13]). Foreign bribery allegations have also had an impact on integrity issues in the country, as a major Costa Rican construction company signed a collaboration agreement with the Anti-Corruption Prosecutor's Office of Panama, to avoid a trial in a case of payment of gifts to officials of that country (OECD, 2020[14]). Furthermore, as evidenced in recent cases, integrity risks are becoming increasingly complex and include a wide range of practices in grey areas aimed at

influencing public decision-making processes directly or indirectly, for example through lobbying activities or political finance (OECD, 2017[15]; OECD, 2021[16]).

Costa Rica is taking actions to avoid impunity. However, beyond the detection and sanctioning of specific cases, it is crucial that Costa Rica continues investing in prevention and strengthens its institutions to mitigate integrity risks. Indeed, to maintain the democratic and economic stability achieved over the last decades, establishing and continuously improving a coherent and comprehensive integrity system is a key ingredient. A system of sound public governance reinforces fundamental values, including the commitment to a pluralistic democracy based on the rule of law and the respect for human rights, and is one of the main drivers for trust in government (OECD, 2017[17]; Murtin et al., 2018[18]). The OECD Recommendation on Public Integrity provides policy makers with a vision for such a public integrity system based on international experiences and good practices (Figure 1.2). It shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society (OECD, 2017[19]).

Figure 1.2. The OECD Recommendation on Public Integrity: System, Culture, Accountability

Source: (OECD, 2017[19])

The National Strategy for Integrity and Prevention of Corruption (*Estrategia Nacional de Integridad y Prevención de la Corrupción, ENIPC*) is an important step towards a resilient and strong integrity system in Costa Rica (ENIPC, 2021[20]). The ENIPC acknowledges the need of developing the governance of integrity as well as a national anti-corruption policy. Concretely, the ENIPC aspires to build a "coherent and comprehensive system of integrity and corruption prevention in Costa Rica that allows the articulation of the efforts of the public and private sectors and citizens" (ENIPC, 2021[20]). In this national dialogue

initiated by the ENIPC, which is reviewed in more detail in Chapter 2, Costa Rica could consider and incorporate, to the extent possible, the recommendations provided in this OECD Integrity Review.

Governance of the public integrity system in Costa Rica

The goal of a public integrity system is to ensure the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector (OECD, 2017[19]). Country practices and experiences show that an effective public integrity system requires demonstrating commitment at the highest political and management levels of the public sector. In particular, this translates into developing the necessary legal and institutional frameworks and clarifying institutional responsibilities.

The legal framework for public integrity in Costa Rica

Over the past decade, Costa Rica has adopted measures aimed at consolidating its legal framework to enhance integrity (Box 1.1). The 1949 Political Constitution states the fundamental principle of public service. Jurisprudence of the Constitutional Chamber has derived from Article 11 the principles of responsibility, accountability, probity and impartiality and calls all public servants to act "with prudence, austerity, integrity, honesty, earnestness, morality and righteousness in the performance of their functions and the use of public resources entrusted to them" (OECD, 2017[21]).

Box 1.1. Main legal instruments in Costa Rica for Integrity and the fight against corruption

Complementing the Constitution, the two main anti-corruption and integrity regulations are the Criminal Code (*Codigo Penal*) of 1970 and Law 8422 of 2004, "Against Corruption and Illicit Enrichment in the Public Function" (*Ley contra la Corrupción y el Enriquecimiento Ilícito, LCIE*).

In addition, other provisions have strengthened the legal and institutional framework for integrity:

- Law 8221 creates the Deputy Prosecutor for Probity, Transparency and Anti-Corruption (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción, FAPTA*) at the Public Prosecution Office (*Fiscalía General de la República, PPO*) and the Anti-Corruption Unit of the Judicial Investigation Body (*Organismo de Investigación Judicial, OIJ).*
- Law 8275 creates the Criminal Jurisdiction of Finance and Public Service.
- Law 8292 General Law on Internal Control (*Ley General de Control Interno, LGCI*).
- Decree 32333 of 2005 regulates the law against Corruption and Illicit Enrichment in Public Service *(Ley contra la Corrupción y el Enriquecimiento Ilícito, LCIE*).
- Decree 33146 of 2006 regulates the "Ethical Principles of Civil Servants" (*Principios Éticos de los Funcionarios Públicos*).
- Guideline D-2 of 2004, General Guidelines on Ethical Principles and Statements on Ethics to be followed by commanding officers, subordinate incumbents, officials of the Office of the Comptroller General of the Republic.

Source: OECD, based on OECD Questionnaire and desk research.

Official integrity actors and their responsibilities at the national level in Costa Rica

The promotion of public integrity typically involves many different official actors in the public sector that cover the various functions of an integrity system as defined in the OECD Recommendation on Public Integrity (Table 1.1). While civil society and private sector of course also play a role, these official integrity actors include the "core" integrity actors, such as the institutions, units or individuals responsible for implementing, promoting and enforcing integrity policies, but also "complementary" integrity actors with key support functions such as finance, external audit, human resource management or public procurement (OECD, 2020[22]; OECD, 2017[19]).

Table 1.1. Main integrity functions in the public sector

SYSTEM	CULTURE	ACCOUNTABILITY
• Assigning clear responsibilities • Ensuring mechanisms to support horizontal and vertical co-operation • Designing and implementing the integrity strategy or strategies • Monitoring and evaluating the integrity strategy or strategies • Setting integrity standards	• Integrating integrity into human resource management (e.g. assessing the fairness of reward and promotion systems) and personnel management (e.g. integrity as criterion for selection, evaluation and career promotion) • Building capacity and raising the awareness of public officials • Providing advice and counselling • Implementing measures to cultivate openness • Opening channels and implementing mechanisms for complaints and whistle-blower protection • Raising awareness in society • Conducting civic education programmes • Implementing measures to support integrity in companies • Implementing measures to support integrity in civil society organisations	• Assessing and managing integrity risks • Applying internal audit • Implementing enforcement mechanisms • Applying independent oversight and audit • Applying access to information and implementing open government measures • Engaging stakeholders across the policy cycle • Preventing and managing conflict of interest • Implementing integrity measures for lobbying • Implementing integrity measures in financing of political parties and election campaigns

Source: (OECD, 2020[22]).

The assignment of responsibilities for these integrity functions depends on the institutional and jurisdictional setup of a country. For example, some countries give core responsibilities for integrity to a central government body or a key ministry, whereas others will make this the responsibility of an independent or autonomous body. Typically, complementary integrity functions are assigned to the institutions responsible for education or human resource management, as well as supreme audit institutions, regulatory agencies and electoral bodies, for example. The OECD Recommendation on Public Integrity states the need of establishing clear responsibilities at the relevant levels (organisational, subnational or national) for designing, leading and implementing the elements of the integrity system for the public sector.

In Costa Rica, the main actors of the current integrity system are:

- The **Attorney General's Office** (*Procuraduría General de la República, PGR*) is part of the Ministry of Justice and Peace. It is the highest advisory, technical-legal body of Costa Rica's public administration and the legal representative of the State in matters falling within its competence. Within the PGR, the **Attorney for Public Ethics** (*Procuraduria de la Ética Pública*, PEP) is the main responsible body for anti-corruption prevention and prosecution. Even though the PGR is attached to the Ministry of Justice and Peace, the law recognises the PGR's functional independence in the exercise of its powers. In turn, the PGR indirectly has access to the executive and political leverage through the Ministry of Justice. At the time of this report, the PEP was

composed of 31 officials, who are appointed based on proven ability and enjoy employment stability. Removal can only take place on grounds of justified dismissal or in the case of a forced reduction of services, as provided in Article 192 of the Political Constitution (OECD, 2017[21]).

- The **National Commission for Ethics and Values** (*Comisión Nacional de Ética y Valores*, *CNEV*). The CNEV was established in 1987 by Executive Decree 17908-J and reformed by Executive Decree 23944 of 1994 to direct and co-ordinate the National System of Ethics and Values. The CNEV co-ordinates the Institutional Commissions on Ethics and Values (*Comisiones Institucionales de Etica y Valores, CIEV*). Overall, the CNEV is responsible for promoting, developing and strengthening ethics and values in the public sector, in private organisations and the Costa Rican society as a whole. Specifically, one of the core values promoted by the CNEV - next to respect, solidarity and excellence - is integrity, defined as acting consistently with the principles of truth and honesty in daily work and with transparency, justice and honourableness as guides to what's just, correct and adequate. In turn, the CIEV are the implementing bodies of the CNEV that should exist in each ministry or agency of the executive branch, but that are only optional in the rest of the public administration (Executive Decree 23944-JC).
- The **Office of the Comptroller General of the Republic** (*Contraloría General de la República, CGR*) is Costa Rica's Supreme Audit Institution (SAI). It has full functional and administrative independence in the performance of its duties and reports to the legislative. Article 184 of the Political Constitution grants the CGR the power to supervise the execution and liquidation of the regular and extraordinary budgets and to examine and approve or not approve the budgets of the municipal governments and the autonomous institutions and supervise their execution and liquidation. In addition, the CGR provides guidelines regarding internal control and monitors and evaluates the internal control system. Furthermore, the CGR maintains a registry that keeps record of disciplinary sanctions to public servants and penalties applicable for non-justifiable increases in wealth (Chapter 3 and 5). The CGR has developed electronic tools to promote transparency and accountability and to measure the performance of the public administration (Chapter 2). Finally, the CGR is responsible for the assets declarations and for sanctioning public officials in case of inconsistencies or unjustified increases.
- The **Office of the Ombudsman of Costa Rica** (*Defensoría de los Habitantes de la República de Costa Rica*) is responsible for protecting the rights and interests of the country's population and reports to the legislative. Its mandate is to ensure that government authorities act within the boundaries of morality, justice, the constitution, legislation, conventions and general principles of the law. The Ombudsman participates in a wide range of anti-corruption activities including the *Inter-institutional Transparency Network*, delivers trainings, courses and workshops on corruption prevention and informs the public on how to file a complaint for corruption cases, for example.
- The **Deputy Prosecutor for Probity, Transparency and Anti-Corruption** (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción, FAPTA*) is responsible for criminal investigations and prosecutions. FAPTA has prosecutors in the capital San José and in regional offices. The Anti-corruption Unit of the Judicial Investigation Body (*Organismo de Investigación Judicial*, OIJ) supports FAPTA in conducting investigations. The OIJ is the judicial police established under the Supreme Court and conducts corruption investigations with the FAPTA. The OIJ may also receive and investigate complaints. Article 16 of the Code of Criminal Procedure (*Código Procesal Penal*, CCP) gives the PGR concurrent jurisdiction with FAPTA over corruption offences. The principal rationale for this arrangement is that the Costa Rican state is considered a victim in corruption cases. Therefore, the PGR participates in domestic corruption prosecutions to protect the state's interest and seeks restitution from the offender (OECD, 2020[14]).
- The **Ministry of National Planning and Economic Policy** (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN) is in charge of formulating, co-ordinating, monitoring and evaluating the strategies and priorities of the Government. In addition, the recent Law on Public

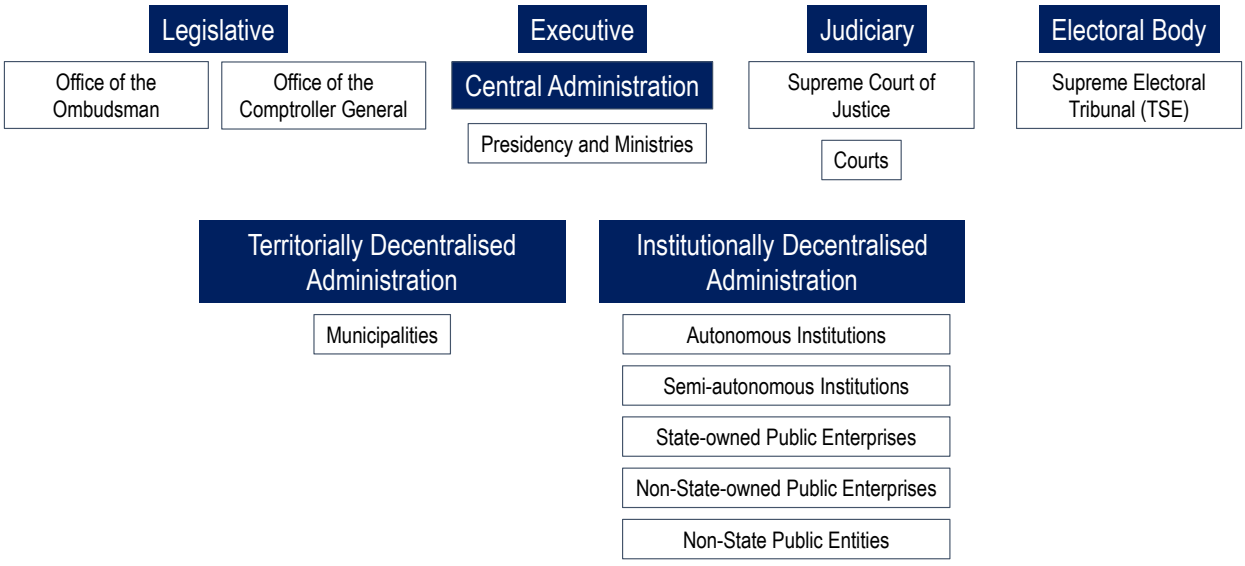
Employment (LMEP), which will enter into force on 10 March 2023, assigns the stewardship of the General Public Employment System to the MIDEPLAN, including providing guidance on ethics and conflict of interest, alongside the PEP (Chapter 3 and 5). Previously, this role has been assumed by the General Directorate of Civil Service (*Dirección General del Servicio Civil, DGSC*), although limited to the 47 entities of the Civil Service Regime (*Régimen del Servicio Civil*, CSR), covering approximately one-third of all public employees. Outside the CSR, most public institutions have their own legislation regulating public employment and HRM practices (OECD, 2017[21]). In fact, under the LMEP, the DGSC will continue to play a technical role.

- The **Ministry of the Presidency** (*Ministerio de la Presidencia*) is in charge of ensuring that the priorities and policies of the President are mainstreamed in the executive. To this end, it co-ordinates the cabinet of ministers (*Consejo de Gobierno*) and plays a key role in promoting and following-up on public policies. The Ministry is also in charge of drafting legislation and leads the strategic relations with Congress towards legal reforms. Finally, it co-ordinates the transition period after changes in government. As such, the Ministry plays a key role in both promoting legal change and the implementation of integrity and anti-corruption policies. Note that the Ministry of Communication of the Presidency is leading Costa Rica's open government policies.
- The **Costa Rican Institute on Drugs** (*Instituto Costarricense de Drogas, ICD*) is attached to the Ministry of the Presidency. The ICD has instrumental legal personality for the performance of its activities and the administration of its resources and assets. The ICD was stablished by Law 8204 of 2001 and deals with issues related to drug trafficking (Law 7786 of 1998 and 8754 of 2009). Its work is related to the prevention and detection of money laundering. As such, the Financial Intelligence Unit (FIU) belongs to the ICD.
- The **Supreme Electoral Tribunal** (*Tribunal Supremo de Elecciones*, TSE) was established by the Political Constitution of 1949. In practical terms, the TSE acquired the status of the fourth Power of the State, equalling the Legislative, Executive and Judicial Powers. The TSE performs four functions: Electoral administration; Civil registration; jurisdictional; and education on democracy. It plays a key function in safeguarding electoral integrity and democracy in Costa Rica.

This Integrity Review looks into responsibilities for the development of strategies and monitoring (Chapter 2), for managing conflict of interest (Chapter 3), transparency and integrity in public decision-making (Chapter 4) and in the disciplinary regime (Chapter 5). The remainder of this chapter analyses and provides recommendations on aspects of co-ordinating integrity policies to promote co-operation and mainstreaming integrity policies into the whole of government.

The topics reviewed are threefold. First, while a working group was established under the shared leadership of the PEP and *Costa Rica Íntegra*, the national chapter of Transparency International, to promote co-operation between the different integrity actors at the planning stage of the ENIPC, a more permanent and multipurpose co-ordination is needed in Costa Rica. Second, Costa Rica faces challenges in ensuring a coherent steering and implementation of integrity policies in the institutional decentralised public administration (*Administración Decentralizada Institucional*) and the territorial decentralised public administration (*Administración Decentralizada Territorial*). Figure 1.3 provides a simplified overview of the organisation of the Costa Rican public sector. Third, Costa Rica could further build on some successful experiences in mainstreaming integrity policies into public organisations, in particular by strengthening the CNEV and CIEV, by modernising its ethics management model (*Modelo de Gestión Ética*, MGE) and by leveraging the ethics audits promoted by the CGR.

Figure 1.3. The organisation of the Costa Rican public sector



Source: Simplified representation prepared by the OECD based on information provided by the MIDEPLAN.

Formalising inter-institutional co-ordination on public integrity policies

Leveraging on the co-ordination achieved during the construction of the ENIPC, Costa Rica could consider a permanent co-ordination commission that includes all relevant public integrity actors and a whole of society approach

The OECD Recommendation on Public Integrity invites countries to promote mechanisms for horizontal and vertical co-operation between the different relevant public integrity actors, including, where possible, with and between subnational levels of government. Such co-operation mechanisms can be formal or informal and aim at supporting coherence, avoiding overlap and gaps as well as sharing information and building on lessons learned from good practices (OECD, 2017[19]).

In fact, evidence suggests that reforms that aim to create or strengthen a values-based culture of sound public governance and integrity cannot be implemented through silo approaches. Crosscutting, multidimensional reform strategies forged through robust co-ordination across government silos to incorporate all relevant areas seem to work best (OECD, 2018[23]). A key advantage of gathering the relevant actors together is that integrity policies can take advantage of the various kinds of expertise around the table and ensure a broad implementation across the public sector by promoting ownership and commitment (OECD, 2019[24]).

Therefore, for an effective co-ordination across the public integrity system, all relevant actors and stakeholders should be articulated through a co-ordination mechanism. Such co-ordinating mechanisms are usually established to lead the anti-corruption reform efforts in a country, in particular the development, implementation and monitoring of a national anti-corruption strategy and policy. The anti-corruption mechanisms, councils, commissions or committees, typically consist of responsible government agencies and ministries. Beyond the executive, they sometimes involve representatives of the legislative and the judiciary and may involve civil society. They are usually assisted by a technical unit supporting the work of the co-ordination mechanism. Table 1.2 provides an overview of some co-ordination arrangements in selected Latin American countries.

Table 1.2. Selected public integrity systems in Latin America

Country	Co-ordination Unit	Co-ordination mechanism	Includes legislative	Includes judiciary	Includes other actors
Argentina	Secretary of Institutional Strengthening (*Secretaría de Fortalecimiento Institucional*) in the Executive Office of the Cabinet of Ministers	Informal co-ordination through working groups System is in the process of being reformed	No	No	No
Brazil	Office of the Comptroller General of the Union (*Controladoria-Geral da União*, CGU)	Anti-corruption Inter-ministerial Committee (Comitê Interministerial de Combate à Corrupção, CICC)	No	Yes	No
Colombia	Transparency Secretariat (Secretaría de Transparencia, ST)	National Moralisation Commission (Comisión Nacional de Moralización, CNM)	Yes	Yes	National Citizens' Committee for the Fight against Corruption (*Comité Nacional Ciudadano para la Lucha contra la Corrupción*)
Chile	Ministry of the General Secretariat of the Presidency (*Ministerio Secretaria General de la Presidencia*)	Commission for Public Integrity and Transparency (*Comisión para la Integridad Pública y Transparencia*)	No	No	An anti-corruption alliance was established as a working group with the private sector and civil society, but they do not participate in the co-ordination structure.
Costa Rica	n.a.	Informal co-ordination, agreements between institutions	n.a.	n.a.	n.a.
Ecuador	Anti-corruption Secretariat (*Secretaria Anticorrupción*)	n.a.	n.a.	n.a.	n.a.
Mexico	Executive Secretary of the National Anti-corruption System (*Secretaria Ejecutiva del Sistema Nacional Anticorrupción*, SESNA)	Comité Coordinador del Sistema Nacional Anticorrupción	No	Yes	Citizen Participation Committee (*Comité de Participación Ciudadana*)
Peru	Secretariat of Public Integrity (Secretaría de Integridad Pública, SIP)	High-level Commission against Corruption (Comisión de Alto Nivel Anticorrupción, CAN)	Yes	Yes	Includes private sector, unions, universities, media and religious institutions (with voice, without vote)

Source: Based on (OECD, 2019[24]), updated with (OECD, 2021[25]), (OECD, 2021[26]), (OECD, 2021[27]) and Executive Decree 412 of 2022 (Ecuador).

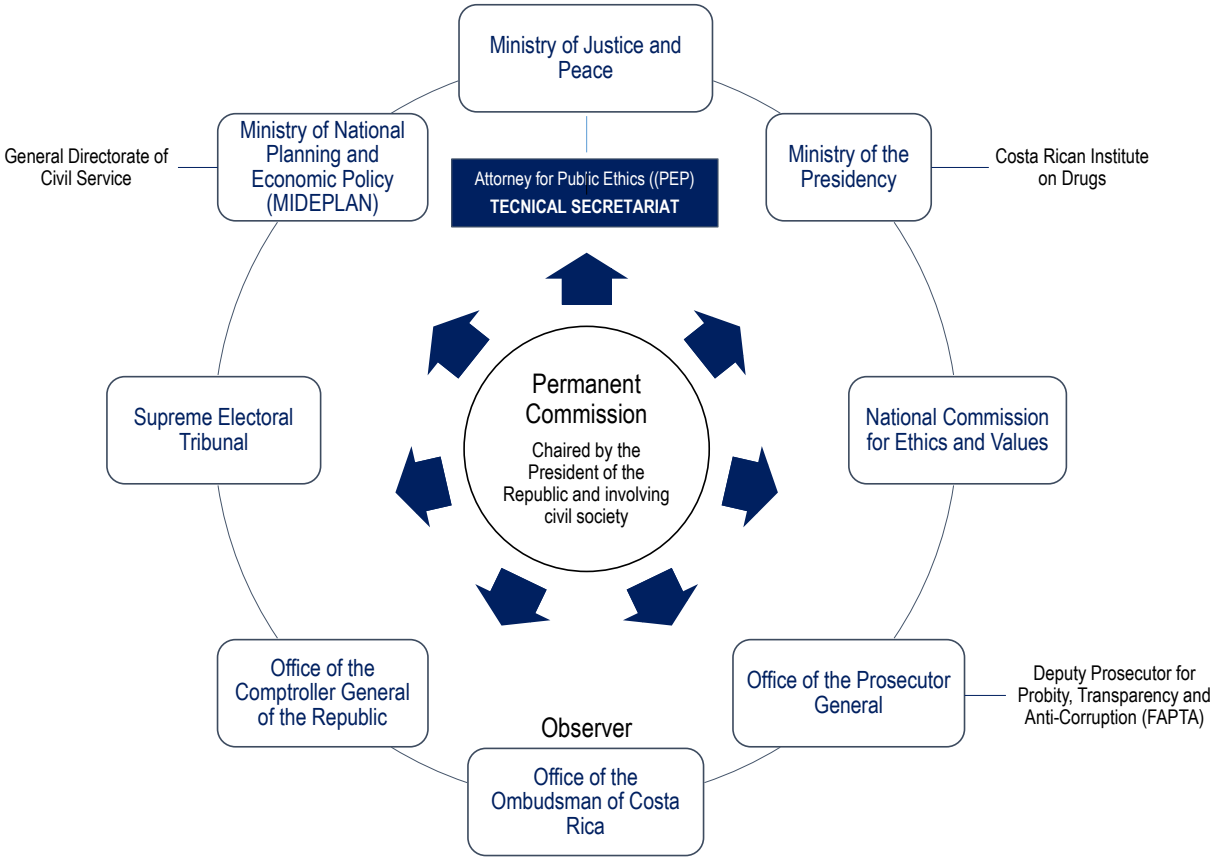
Costa Rica currently does not have such a formal co-ordination mechanism involving all key integrity actors. There have been, however, a number of informal co-ordination initiatives. These arrangements have benefitted from a political culture based on trust rather than formal requirements. For example, there have been ad hoc collaborations between the CNEV and PEP consisting of legal reviews by the PEP of guides and manuals issued by the CNEV. Furthermore, some trainings have been conducted jointly for the institutions of the National System of Ethics and Values. Another example is an informal working group on enforcement established by the PEP, CGR, FATPA and the ICD. While an agreement has been signed by the leaders of the institutions, the decision made was to not further formalise the mechanism to maintain its flexibility. Consequently, no official agenda exists, but according to the interviews conducted, this working group has led to various joint efforts and has improved co-ordination, albeit on an ad hoc basis (OECD, 2017[21]).

In adopting the ENIPC, Costa Rica aimed at addressing existing silos and laid the foundation for increased co-operation through its participative approach. At the same time, while evidencing the potential benefit of such closer co-operation, the process of the ENIPC also has exposed challenges with respect to achieving an effective and more consistent co-ordination between actors of the public integrity system. For instance, the interviews conducted by the OECD showed that the degree of involvement of some relevant integrity

actors during the ENIPC has been uneven. Relevant stakeholders such as local administrations or the Presidency and the Congress, who are vital to passing implementing legislation, were not very well informed about the process and had little knowledge about the ENIPC and their role. Similarly, some stakeholders mentioned during the virtual fact finding mission that at times it is difficult to understand who does what, which creates risks for duplications and overlaps. Furthermore, it was reported that constant changes of public officials in public entities are eroding the continuity of engagement and co-ordination efforts. Chapter 2 provides a more in-depth analysis and recommendations on how to build on the ENIPC and improve the strategic process.

Therefore, to improve co-operation while recognising that several actors play a role in implementing different aspects of integrity policies, Costa Rica could consider establishing a formal permanent commission, ideally established by Law, as a co-ordination mechanism. During the virtual fact-finding, several actors expressed the need to move from the rather informal settings to a more formal co-ordination, building on the experience acquired during the preparation of the ENIPC. Enshrining the co-ordination mechanism in a Law would allow to build it on a stable foundation, more resilient to future changes in governments and policies. For example, the Colombian National Moralisation Commission has been established by Law 1474 of 2011 and the Peruvian High-Level Commission against Corruption (CAN) by Law 29976 of 2013 (OECD, 2017[28]; OECD, 2017[29]). Costa Rica could learn from the experiences of these countries and consider an arrangement that reflects its institutional landscape and context. Based on the analysis conducted by the OECD, Figure 1.4 provides a proposal for such a mechanism.

Figure 1.4. Proposal for a formal public integrity co-ordination mechanism in Costa Rica



Source: OECD.

As a clear signal of political commitment and to set the tone-at-the-top, the commission could be presided and led by the President of the Republic, as head of the State. The members of the commission should be represented by the heads of the institutions so that relevant decisions can be taken directly by the group. In the case of the Prosecutor General, this participation could be delegated to the specialised unit of the FAPTA. During the interviews conducted by the OECD, the Ombudsman Office voiced concerns with respect to its participation in such a mechanism. During the interviews, the Ombudsman emphasised the importance of maintaining and clearly signalling their independence. Even so, the Ombudsman Office brings relevant information and perspectives to the table and could significantly enrich the debates. Similar to the Ombudsman Office of Peru, the participation could therefore be restricted to voice but without the power to vote and its involvement be communicated as an observer. The proposal for the Technical Secretariat will be discussed in the section below.

In addition, Costa Rica should involve the civil society and the private sector in a more formal way to promote a whole-of-society perspective in the discussions.

- **Civil society:** If civil society and academia feel comfortable with being involved and able to maintain and communicate their independence, such an involvement could be achieved by giving civil society, including academia, a permanent seat in the Commission. As with the Ombudsman, and for the same reasons, this representation could be with voice but without vote, to promote independent opinion. The organisation or person could be elected for a given period of time (e.g. two years). There are already similar practices in Costa Rica on which to build on. The National Open State Commission (*Comisión Nacional de Estado Abierto*) has two civil society representatives who are chosen by the Commission based on an application process open to any organisation that works on related issues. Similarly, the Institutional Commission of Open Parliament (*Comisión Institucional de Parlamento Abierto*) has an open call for applications and the directorate of the Legislative Assembly elects the representatives of civil society. In both commissions Costa Rica Íntegra, the national chapter of Transparency International, has applied and been elected. Alternatively to a permanent representation, civil society could be included by legally requiring the commission to regularly consult civil society and academia through formal and transparent channels. This could avoid potential issues with independence and representativeness, while ensuring broad opportunities for several organisations and academics to participate.
- **Private sector:** Some private sector organisations and business associations consulted by the OECD in the context of this Integrity Review expressed that they appreciated the efforts that were made to involve them in the elaboration of the ENIPC. Others, however, stressed that they were not invited but would have liked to contribute their views. At the same time, they advocated for a more flexible, non-bureaucratic involvement. Therefore, the co-ordination commission could consider ways of regularly inviting private sector to provide inputs and feedback into the discussions while ensuring that these channels are transparent and open (Chapter 4).

The proposal for this commission contributes to the national dialogue in Costa Rica on achieving the Activity 1.1.1 of the ENIPC, which aims at proposing a governance model to organise and develop the work on integrity, control environment and anti-corruption. Ideally, Costa Rica could consider establishing such a commission before starting the development of the national integrity and anti-corruption policy as foreseen in Activity 1.2.1 of the ENIPC. The process of developing this policy could be one of the first concrete tasks of the new commission and allow to test and, if necessary, adapt its working regulations and procedures. Later, the commission would be responsible in steering and overseeing the implementation of the ENIPC and the policy, regularly discussing emerging integrity challenges, designing integrity legislation and guidance, as well as ensuring the mainstreaming of integrity policies through the whole of government and society. In addition, the commission could ensure a coherent communications strategy capable of providing citizens, private sector and public officials alike with an overarching idea of existing and planned integrity policies.

As discussed in the subsequent sections, this high-level commission could be supported by two technical sub-commissions, one on prevention and one on enforcement, and supported by a technical secretariat as general co-ordination unit, which could be assured by a strengthened PEP, building on its recent experience of co-ordinating the ENIPC.

Two technical sub-commissions, one on prevention and one on enforcement, could promote discussions on more technical levels and ensure continuity of policies

In addition to the high-level commission recommended above, to increase the ownership of its members and to make the most out of the knowledge around the table, Costa Rica could strengthen the technical discussions around integrity and anti-corruption policies by establishing two technical sub-commissions, one on prevention and one on detection and sanction. The technical sub-commissions would meet more regularly than the high-level commission.

In particular for the area of enforcement, there have been some already mentioned informal efforts in Costa Rica to co-ordinate on particular cases and actions, which could constitute the basis for a technical sub-commission discussing aspects related to detection, investigation and sanctioning of cases. Indeed, the FAPTA, the CGR and the PEP already meet regularly to discuss cases, including at the subnational level and law enforcement co-ordination has been achieved on specific cases. These same institutions have also been working on a platform to collect data on complaints to identify the sectors that are most vulnerable and prone to corruption in Costa Rica.

A sub-commission on enforcement could discuss and propose reforms on more technical levels, which could then be approved at the level of the high-level commission and brought to the legislator, if required. According to Costa Rican authorities interviewed by the OECD, enforcement would benefit from a more formal structure for sharing relevant case information. This would in turn contribute to the fulfilment of criminal policy objectives, the developing a strategy to address the links between corruption and organised crime, encouraging the sharing of relevant case information, standardise criteria for reporting and accessing information by law enforcement agencies, amongst others. For example, the FAPTA would like to have direct access to asset declarations, now managed by the CGR, to use this as evidence in high profile cases of illicit enrichment (Art. 46 Illicit Enrichment Law). Similarly, FAPTA, who largely depends on internal data from other agencies (including the judiciary), finds it difficult to access and analyse information because of the quality of the data and a lack of homogenous system. The sub-commission could also explore the development of agreements between agencies to ensure consistency in the data reported and work towards establishing a strategy for the use of data analytics, or establishing a shared judicial police section for anti-corruption investigations. Such a shared judicial police service may include auditors specialised in economic and financial crimes as well as criminologists that can provide in-depth criminal analysis. The sub-commission could also leverage on the “virtual desk” led by FAPTA and ensure that this initiative is properly known by and co-ordinated with all relevant actors.

In turn, on the preventive side, the responsible sub-commission could in particular monitor the implementation of the ENIPC and steer the development of the forthcoming integrity policy. Later, the sub-commission would play a key role in monitoring the implementation of the policy, producing evidence using relevant indicators and informing the high-level commission about possibly required actions to adjust to new challenges, priorities or opportunities (Chapter 2). Furthermore, the sub-commission on prevention could identify and discuss generic corruption risks and the effectivity of mitigation measures to fine-tune integrity risk management methodologies and to provide better guidance on integrity risk management throughout the whole public administration, including in the institutionally and territorial decentralised administrations. The sub-commission could also discuss improvements of existing integrity policies such as the implementation of ethics codes, communication and awareness raising strategies, policies to improve transparency and integrity in political decision-making processes (Chapter 4), regulations and guidance on managing conflict of interest (Chapter 3) and could align with the General Public Employment

System, created recently by the Law on Public Employment (Law 10159, *Ley Marco de Empleo Publico*, LMEP), led by the MIDEPLAN.

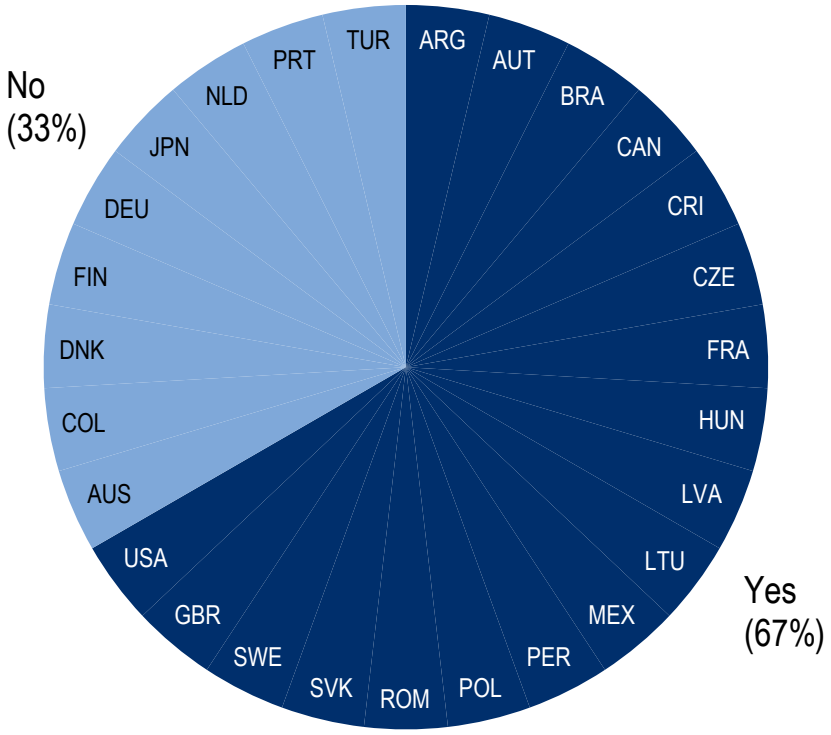
Together, both sub-commissions would help ensuring the technical foundations for the discussions and decisions in the high-level commission and contribute to the technical quality of integrity policies in Costa Rica. The technical sub-commission could also contribute to strengthen continuity beyond changes in government and of the heads of the respective members of the high-level commission (or "*jerarcas*"). Together, both sub-commission could also improve the identification of criminal macro trends and promote the use of data and statistics that, in turn, may lead to improve the evidence-base for the preventive work (Chapter 2). Depending on the agenda that is being discussed, the technical experts participating in these sub-commissions could vary from meeting to meeting and therefore contribute to mainstreaming knowledge and responsibilities within the participating integrity actors. These technical experts would be responsible for briefing their respective head of agency and to follow-up any decisions taken in the commission or sub-commission in their respective institutions. If required for the discussions, experts from civil society and academia, public officials from other relevant public actors not regularly participating in the high-level commission (e.g. the ministry of public education, the ministry of health or the ministry of public works and transport), or from the private sector could be invited to contribute from their perspective and specific knowledge.

Costa Rica could assign the responsibility for central institutional co-ordination of integrity policies to the Ministry of Justice and the Attorney for Public Ethics, or consider establishing a new, independent authority

Beyond ensuring political commitment at the highest level, experience with similar arrangements in other countries indicate that, to allow for a proper functioning of such a co-ordination mechanism, it is important that there is a technical support unit with the required mandate, summoning power, capacities and appropriate financial resources to convene the relevant actors, organise the meetings, the agendas, steer the discussions and prepare background information. For example, the Anti-Corruption Council in Georgia is supported by the Secretariat in the Ministry of Justice, the Inter-ministerial Working Group in Albania by a secretariat within the Cabinet of Ministers, the National Moralisation Commission of Colombia by the Transparency Secretariat located in the Vice-presidency office and the High-Level Commission against Corruption (CAN) of Peru by the Public Integrity Secretariat (*Secretaria de Integridad Pública*, SIP), attached to the Presidency of the Council of Ministers (see Table 1.2 above).

In Costa Rica, the Attorney for Public Ethics (PEP) is currently the competent national authority of Costa Rica under the United Nations Convention against Corruption, the contact point for the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (MESISIC) and represents Costa Rica in the OECD Working Party of Senior Public Integrity Officials (SPIO). There, it has been active in exchanges of good practices and the dialogue on integrity amongst OECD countries and in Latin America. While the OECD Working Group on Bribery (WGB) in its phase 2 evaluation recommended that a single public body should be tasked with overseeing the implementation of the national strategy and action plan (OECD, 2020[14]), the PEP de facto already played this role in co-ordinating the development of the ENIPC, liaising with the entities from the public sector, the private sector and civil society. This role has been acknowledged in the OECD Public Integrity Indicators (Figure 1.5). Nonetheless, according to the interviews conducted for this review, formalising this role as the central co-ordinating role is a much-needed step to strengthen co-ordination, communication and for creating synergies between the existing integrity actors.

Figure 1.5. PII: Existence of a central co-ordination function responsible for co-ordinating the implementation, monitoring, reporting and evaluation of the action plan



Source: https://oecd-public-integrity-indicators.org/v

StatLink https://stat.link/gqcwta

Based on the process of the ENIPC and its mandate, the PEP is of course the natural candidate to carry out this role of the technical secretariat. Being located in the executive and under the political leadership of the Ministry of Justice and Peace, but with functional independence and independent judgment in the performance of its attributions, the PEP is also both close to the public administration and able to promote the trust required to enable a better co-ordination between the executive and law-enforcement agencies. In this task, the PEP could be further supported in particular by the MIDEPLAN to leverage its experience with planning and monitoring of public policies as well as its new role in the context of the LMEP, involving responsibilities related to the management of conflict of interest and the disciplinary enforcement.

However, to ensure the successful steering of integrity policies, Costa Rica could consider strengthening the PEP along several lines:

- First, the legal mandate for steering and co-ordination of integrity and anti-corruption strategies and policies should be included explicitly amongst the PEP's functions. The mandate would in particular include acting as the central co-ordination unit and technical secretariat responsible for supporting the high-level commission and for providing guidance to both sub-commissions, helping to shape the agendas, facilitate the work and ensuring the exchange of information between the participating members. The PEP, with political support from the Ministry of Justice, should be able to articulate closely and regularly with the Ministry of the Presidency, so that decisions related to the preparation of draft legislation and the relationship with the National Congress can be jointly planned and implemented and to ensure that integrity policies find their way into the agenda of the Cabinet of Ministers. Special attention should be giving to assuring co-ordination with the

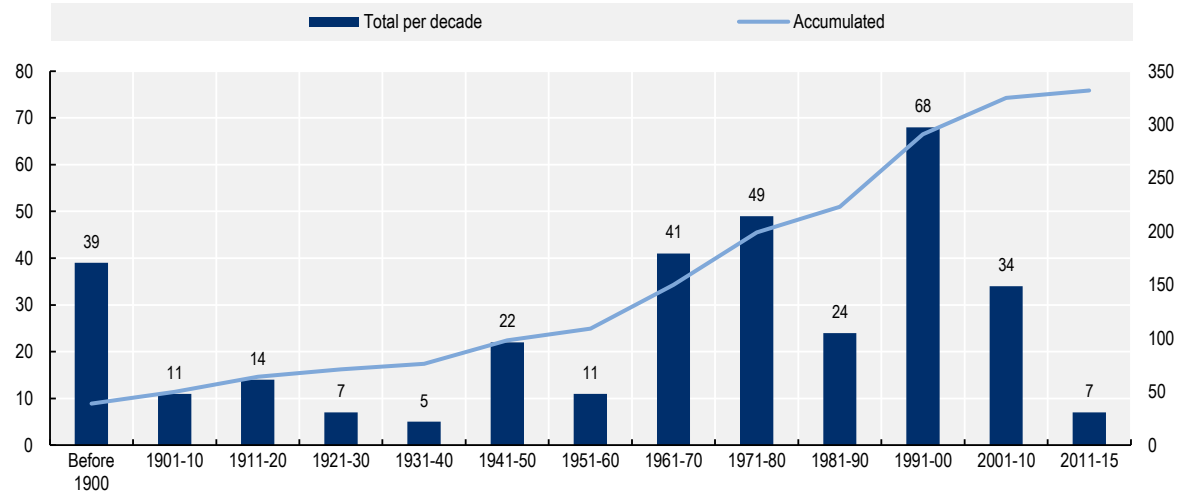
MIDEPLAN, CNEV and CIEV, in particular to mainstream public ethics and conflict-of-interest management in the whole of the public sector and the whole of society.

- Second, the PEP should clearly separate into two distinct internal areas its work related to the reception and processing of administrative complaints for acts of corruption, lack of ethics and transparency in the exercise of public functions, on the one hand, from the preventive functions related to prevention and the steering, co-ordination and monitoring of integrity policies, on the other hand. Both areas should have a separate internal budget, a separate staff with specific required skills and should be able to develop a distinct communication strategy. Indeed, experience and research evidences the benefit of clearly separating enforcement from prevention roles, especially also because enforcement priorities often prevail over prevention, both in terms of time and resources (OECD, 2019[30]; OECD, 2018[31]). Especially in an institution like the Office of the Attorney General, that has a strong legal culture and focuses on cases, it is key to implement internal institutional arrangements that safeguard an area that is policy-oriented and focuses on prevention. The area requires different perspectives and different skills as currently present in the Office of the Attorney General and are only nascent in the PEP.
- Finally, Costa Rica could also consider entrusting the preventive area of the PEP with a broader role and gradually incorporate a whole of government approach to integrity policies in Costa Rica. This may include centre of government steering of integrity policies, particularly, in the institutionally decentralised sector and providing clearer guidance for the territorially decentralised public sector, while respecting the autonomy and enable differentiated local integrity policies that respond to different priorities, needs and opportunities across the territory (OECD, 2021[32]).

This potential reform of the PEP would ideally go along with an internal organisational development exercise aimed at defining and sharpening the PEP's new strategic focus, priorities, boundaries and internal co-ordination and communication channels. In addition, the PEP could increase its own transparency and accountability, for instance, by strengthening its own website and by preparing public reports and statistics on its activities and results.

As an alternative option, Costa Rica could also consider the opportunity provided by the ENIPC to establish a new integrity agency in Costa Rica, with administrative and financial independence, as well as an own legal capacity and budget, in charge only of prevention, central co-ordination and monitoring of integrity policies. First, such an agency would enable an even clearer distinction between the roles of prevention and enforcement in Costa Rica. Second, a new independent agency could send a clear message to the public sector, to law enforcement agencies and to society as a whole that there is a commitment to avoid any politisation of the integrity and anti-corruption agenda. In turn, the PEP could then concentrate on its current role as attorney of the State, recovering assets from corruption cases and fighting for recognising the social costs of corruption, as well as on the reception and processing of administrative complaints related to corruption. However, it is unclear whether the potential benefits of this alternative option can justify the administrative and financial costs of creating a new institution. Taking into account the context in Costa Rica, where there has been criticism related to the creation of too many institutions (Academia de Centroamérica, 2016[33]), such an option should be considered very carefully by the legislator (Figure 1.6).

Figure 1.6. Number of created public institutions in Costa Rica, 1900-2015



Source: (Academia de Centroamérica, 2016[33]) based on data from the MIDEPLAN.

Mainstreaming integrity policies into the whole public administration

Costa Rica faces a cross-cutting challenge of implementing integrity policies in the institutionally (ADI) and territorially (ADT) decentralised public administrations

Countries around the world are facing the challenge of ensuring a coherent and effective implementation of integrity policies throughout their public administration, sometimes referred to as the challenge of mainstreaming. Typically, gaps exist between the normative requirements of the framework and actual effective implementation. In line with the OECD Recommendation on Public Integrity, implementation goes beyond a formal compliance with the existing regulations and should achieve real change in organisational cultures and behaviours (Rangone, 2021[34]; OECD, 2018[31]). In particular, the challenge involves translating and anchoring standards into a wide variety of organisational realities.

A coherent implementation of integrity standards may also be more difficult because of different levels of autonomy and independence between branches of government, between levels of government and between entities within the public administration. Indeed, as mentioned above and shown in Figure 1.3, Costa Rica's public sector, beyond the division between branches, with the legislative, the judiciary and the Supreme Electoral Court, further divides the public administration into three levels:

- The Central Administration (*Administración Central*) at the national level, with the ministries.
- The Institutionally Decentralised Public Administration (*Administración Descentralizada Institucional*, ADI), with autonomous institutions, semi-autonomous institutions, state owned enterprises, non-state public enterprises, non-state public entities.
- The Territorially Decentralised Public Administration (*Administración Descentralizada Territorial*, ADT), with the 84 municipalities.

Most entities of the institutionally decentralised sector were created in the 1940s as autonomous institutions with a mandate of policy making as well as service delivery, such as health, energy and education. A more recent wave of newly created public institutions primarily consists of subsidiary bodies, representing "policy implementation shortcuts" to attain greater administrative and budgetary flexibility (OECD, 2017[21]). Organisations that belong to the ADI are enjoying autonomy with respect to the internal

management of public ethics. There is no requirement to implement a code of conduct or ethics and no specific guidance on how to develop such a code or to train and provide guidance to staff.

In turn, the territorially decentralised public sector in Costa Rica has a total of 84 Municipalities and 8 Municipal District Councils (MIDEPLAN, 2019[35]). Law 7794 of 2008, better known as the Municipal Code, governs the structure, operation, characteristics, organisation and scope of the country's municipal system. According to the Code, each "canton" (administrative territorial units) is composed of municipalities (administrative body) and councils (oversight) (MIDEPLAN, 2019[35]). According to Law 4325, municipalities have financial and administrative autonomy and full discretion over the implementation of national policies at the local level. This provision gives autonomy to municipalities to implement their own integrity and anti-corruption policies. The central government can only provide general guidelines to this level. The MIDEPLAN provides tools and guidance for planning at the local level and, if needed, establishes formal agreements. Additionally, the Municipal Development and Advisory Institute *(Instituto de Fomento y Asesoría Municipal*, IFAM) is an autonomous institution that provides regulatory support and trainings to municipalities.

Integrity is the responsibility of all public officials, independent of the branch or sector they are working in. Following the OECD Recommendation on Public Integrity, and in line with Art. 2 of the United Nations Convention against Corruption definition of public officials, the public sector includes:

> *"…the legislative, executive, administrative, and judicial bodies, and their public officials whether appointed or elected, paid or unpaid, in a permanent or temporary position at the central and subnational levels of government. It can include public corporations, state-owned enterprises and public-private partnerships and their officials, as well as officials and entities that deliver public services (e.g. health, education and public transport), which can be contracted out or privately funded in some countries." (OECD, 2017[19])*

In particular, integrity leadership at all levels within a public organisation is essential to demonstrate commitment to integrity. With their function of being ethical leaders and providing an example, public managers play a crucial part in the effective promotion of an integrity culture (OECD, 2017[19]; OECD, 2009[36]; OECD, 2020[22]). For example, in Colombia, the Integrated Planning and Management Model (*Modelo Integrado de Planeación y Gestión*, MIPG) requires public managers to periodically report on their actions related to integrity, transparency and other cross-cutting issues (Función Pública, 2017[37]). In France, senior management are personally responsible and ultimately accountable for the effective implementation and promotion of an organisation's integrity programme (Agence Française Anticorruption, 2020[38]). Not at least, planning is an important tool to trickle down policies from the national level to the organisational levels, including in the territory (Chapter 2).

Nonetheless, dedicated "integrity actors" in public entities can contribute to overcome the challenge of mainstreaming integrity policies to ensure implementation and to promote organisational cultures of integrity. International experience shows the value of having a specialised and dedicated person or unit that is responsible and can be held accountable for the internal implementation and promotion of integrity laws and policies (OECD, 2009[36]; G20, 2017[39]; OECD, 2019[24]). In Peru, for example, Offices of Institutional Integrity have to be established throughout the national public administration and in local governments, with the Secretariat for Public Integrity as governing body (OECD, 2019[40]; OECD, 2021[41]). In Brazil, the established Public Integrity System of the Federal Executive Branch (SIPEF) aims at mainstreaming integrity policies with the Office of the Comptroller General (CGU) as central organ and Integrity Management Units (UGI) in all entities of the federal executive branch (OECD, 2021[26]).

In Costa Rica, an important, yet beyond the Central Administration voluntary tool for mainstreaming, exists currently in the area of ethics management: the National Commission of Values (CNEV) and the Institutional Commissions on Ethics and Values (CIEV). This section covers the essential role played by both the CNEV and the CIEV as catalysts of the integrity system. The CIEV, in particular, could provide the foundation for more functional dedicated and professionalised integrity units. The next sections also emphasise the role played by the CGR, which can set incentives to implement integrity and ethics standards throughout the entire public administration, including the decentralised sectors, through its external audit function as well as through the guidelines on "ethical audits".

Costa Rica could reach the Decentralised Public Administrations through dedicated integrity units, building on the Institutional Commissions on Ethics and Values (CIEV) and strengthening the National Commission of Values (CNEV)

In Costa Rica, as early as 1987, the National Ethics and Values Commission (CNEV) was created by Executive Decree 17908-J, to carry out the objectives of the National Plan for the Rescue of Values, with the participation of Ministries and other institutions of the central administration. To strengthen the actions of the CNEV, Executive Decree 23944-JC of 1994 established the Institutional Commissions on Ethics and Values (CIEV) as implementation units of the CNEV that should exist in each ministry or agency of the executive branch and that are optional in the rest of the public administration (ADI and ADT). Incentives for implementing a CIEV were indirectly provided through the CGR's Institutional Management Index (*Índice de Gestión Institucional*, IGI), where having such a commission in place improved the score. The IGI was last implemented in 2019 and is being replaced by the Management Capacity Index (*Índice de Capacidad de Gestión*, ICG; see Chapter 2, Box 2.3).

The Executive Decree establishes that the objective of the CNEV and CIEV is to promote ethics and to contribute to the efficiency of the public sector. The CNEV is supporting the implementation of the ethics management model (*Modelo de Gestión Ética*, MGE). The MGE includes, amongst others, the establishment of a CIEV, periodic assessments of institutional ethics (diagnosis), steering the development of an organisational Ethics Code or an Ethics Manual, implementing communication campaigns and providing advice to the CIEV in designing training programmes on ethics, as well as support on how to include ethics into key institutional processes (Box 1.2). The guidance provided by the CNEV clearly separates public ethics from legal and disciplinary issues, which can be regarded as a good practice following behavioural insights on how to promote a culture of integrity based on shared common values (OECD, 2018[31]). This clear separation should be maintained.

Box 1.2. The Ethics Management Model in Costa Rica

Costa Rica promotes the ethics management model (*Modelo de Gestión Ética*, MGE) in public organisations based on self-regulation. An institution wishing to implement the MGE has to implement the following steps:

- Positioning: It requires the formalisation of the commitment of the highest authority of the institution ("*jerarca*") and the establishment of an Institutional Commission on Ethics and Values (*Comisiones Institucionales de Etica y Valores, CIEV*), which can be supported by a technical unit. The CIEV has to receive training, define its work plans and monitor its actions.
- Diagnosis and definition of the Ethical Framework: The participatory identification of the values leading to the drafting of a Code of Ethics or Conduct, an Ethics Policy and its action plan.
- Communication and training: Requires communicating the shared values, the manual or code and other elements of the institutional ethical framework and the creation of feedback and consultation mechanisms for civil servants. In this step, the institution also needs to envisage training in a systematic and permanent way.
- Alignment and insertion of ethics in institutional management systems: Includes implementing the Ethics Policy and its action plan to address the findings and deficiencies determined by the diagnosis. This action plan should be part of the strategic annual institutional plan of the institution (*Planes Estratégicos Institucionales*, PEI). Ethics should be mainstreamed in human resource management and other management processes, such as financial management, procurement, transfer of resources, granting of permits, administrative procedures, information management, managing conflict of interest or dealing with complaints amongst others.
- Monitoring and evaluation: All implemented actions have to monitored and regularly reviewed in view of identifying corrective actions. The "Ethics Audits" promoted by the CGR and internal audit are part of this evaluation stage.

Source: (CNEV, 2021[42]); https://cnrvcr.wordpress.com/proceso-de-gestion-etica/

Even if issuing non-mandatory guidance, the CNEV, the CIEV and the MGE, can be considered as goo practices and a key step towards ensuring mainstreaming of public integrity in the whole of the public sector, including the central government, the autonomous bodies, decentralised sector and municipalities (OECD, 2017[21]). Currently, 84 out of 326 public institutions have implemented such a commission. Beyond the Central Administration, the CGR, the Ombudsman, the Judiciary, 9 municipalities and several institutions from the ADI have implemented a CIEV.

Nonetheless, the CNEV and the CIEV face several challenges.

- First, the CNEV and the CIEV typically have capacity and financial constraints. Executive Decree 23944 of 1994 does not state whether CNEV or the CIEV will have funding or an administrative structure covered by the general budget. These challenges to fulfilling their mandate was confirmed during the fact-finding conducted by the OECD, where several stakeholders mentioned the lack of dedicated and specialised human resources and financial resources as main barriers an effective functioning of the CNEV and the CIEV.
- Second, the members of the CIEV are public officials that are not exclusively dedicated to the commission. This comes along with challenges already highlighted in other contexts, in particular with respect to continuity, the development of specific knowledge and capacities as well as the ability to build trust relationships, which require time (OECD, 2017[43]; OECD, 2021[26]; OECD, 2019[40]). In fact, in a focus group carried out by the OECD, members from CIEV expressed the

need to have support from the legal and human resources areas, as well as some basic training in relevant legal regulations. They also expressed the need to receive more guidance from the CNEV on integrity risk identification and management procedures. Out of the 65 CIEV, only five have a technical unit supporting the members of the commission and which could address some of the challenges mentioned.

- Third, the mainstreaming of public ethics at organisational level requires strong political will from high-level management ("*jerarcas*") to decide and support an effective implementation of the MGE. According to the OECD interviews and focus group, this political will and "tone-at-the-top" at the highest level is, however, often weak or absent. Ethics management is rarely seen as a priority by high-level management. Consequently, many institutions of the public sector are not implementing the MGE and those who do, often do not ensure that sufficient resources are dedicated to it.
- Fourth, according to Decree 23944, the head of the entity (*"jerarca*") designates the members of the CIEV and determines the number of its members. Once established, these members elect a president. The OECD interviews indicated that there is little to no guidance for the *"jerarca*" on how to select these members, as well as little guidance for the selected officials with respect to their roles and responsibilities. Indeed, the OECD interviews evidenced that some public officials in CIEV even misunderstand their role and want to push for a more punitive approach. This could create confusion and endangers the currently clear focus on prevention.

Costa Rica could address these issues, leveraging the solid foundation provided by the CNEV, the CIEV and the MGE, and move towards more robust and effective integrity management and integrity units, while maintaining the current clear focus on prevention and promotion of public ethics.

To do so, Costa Rica could consider, in the first place, a legal reform that provides a clear mandate for the CNEV and the CIEV, full co-ordination powers for the CNEV and appropriate resources for the functioning of both. As foreseen in the ENIPC, the reform should consider implementing the MGE, including the establishment of a CIEV, in all institutions of the Costa Rican public sector. As such, the CIEV could become the articulating link with the co-ordination commission recommended above to ensure that integrity policies are effectively implemented at organisational levels. Especially at the municipal level, the implementation of guidance on public ethics is incipient, but an increasing number of municipalities are making first steps in implementing ethics manuals and/or codes following the CNEV guidelines and some have implemented CIEV. The CNEV could take advantage of and learn from these already existing CIEV at municipal level and provide targeted guidance to the territorial levels.

Second, Costa Rica could start a dialogue on the possibility to transform the current CIEV into dedicated integrity units with full time and professionalised and specialised staff. This unit could either replace the CIEV completely, or if the commissions shall be maintained, could be the technical secretariat that supports the CIEV and leads the internal co-ordination of the implementation of the MGE. Such a unit could be inspired by emerging successful practices in Peru, with the implementation of the Integrity Model (*Modelo de Integridad*) and the Offices of Institutional Integrity (*Oficinas de Integridad Institucional*) (OECD, 2019[40]), or by Brazil, with the Public Integrity System of the Federal Executive Branch (SIPEF) including the establishment of Integrity Management Units (UGI) (OECD, 2021[26]). At a minimum, the guidelines issued by the CNEV should encourage high-level management to assign additional staff (a technical secretariat) and budget to the CIEV.

In addition, Costa Rica should strengthen both the CIEV and the MGE along several lines:

- To signal an improved framework, the CNEV could consider moving from the use of "ethics management" to "integrity management". Indeed, one high-level authority expressed concern during the OECD fact-finding about old-fashioned or religious connotations coming along with "ethics" in Costa Rica and that could undermine a broad acceptance amongst public officials. In fact, while earlier OECD publications refer to "ethics", recent publications prefer the term "integrity" (OECD, 2009[36]). However, to avoid any confusion in Costa Rica, communication should

emphasise that integrity management and units do not and should not have a role related to enforcement.

- Indeed, the CNEV should continue to clarify that these units are entirely dedicated to prevention, promoting cultures of organisational integrity and ensuring the implementation of integrity policies within the public administration. CIEV (or potential future integrity units) should not be receiving complaints, investigating cases or much less have a role in sanctioning. International experience shows that such enforcement roles draw resources from prevention activities, creates confusion amongst public officials and undermines establishing the CIEV as a safe haven where public officials can raise concerns and doubts without fear of reprisal.
- The current MGE, transformed into an Integrity Management Model (*Modelo de Gestión de Integridad*), could assign more explicitly to the CIEV (or potential future integrity units) the role of articulating internally different areas relevant to promoting an organisational culture of integrity and supporting the high authority and public managers. This support to public officials could focus in particular on providing orientation on managing conflict of interest (Chapter 3), identifying and dealing with ethical dilemmas and supporting integrity risk management. Articulation and co-ordination, in turn, is particularly relevant with existing or future disciplinary units (Chapter 5) and with the human resource units. These human resource units have recently been empowered by the LMEP and could play a key role in promoting integrity throughout the human resource management process and ensure capacity building through the planning of training opportunities for public officials. A revised Integrity Management Model could also provide clear criteria for indicators to monitor the implementation and evaluate the effectiveness of the MGE.
- Finally, the CNEV could consider promoting a more active communication between the different CIEV (or potential future integrity units) and creating a bank of good practices that could help guide decision-making processes, including at the subnational level.

Third, the current practice of developing institutional Ethics Codes or Manuals allow to reflect the specific context of the respective institutions. However, despite that Decree 33146 of 2006 is regulating the “Ethical Principles of Civil Servants” (*Principios Éticos de los Funcionarios Públicos*), OECD interviews indicated a lack of a homogenous understanding of what are the shared principles and values of the Costa Rican public sector. Furthermore, the “Manual of Ethics for Civil Servants” (*Manual de Ética en la Función Pública*) was developed by the DGSC and sets policies for the 47 entities of the civil service regime. However, this Manual was not developed in co-ordination with the CNEV, evidences the sometimes lacking co-ordination in Costa Rica and further undermines a homogenous understanding of public ethics in the public administration.

Therefore, steered by the CNEV, Costa Rica could initiate a participative review and identification of shared ethical values for the whole public sector to promote clarity and build ownership. The CIEV (or potential dedicated integrity units) could then apply and if necessary complement those shared values to reflect the specificities of each institutional context. Costa Rica could be inspired by relevant participative approaches followed by several countries in defining core values and principles (Box 1.3). Such a process could also increase the commitment of high-level management to develop the necessary legal and institutional frameworks to implement these values as well as to lead by example and display high standards of personal propriety.

Box 1.3. Participative development of shared values in Australia, Brazil and Colombia

Australia

In the past, the Australian Public Service Commission used a statement of values expressed as a list of 15 rules. In 2010, the Advisory Group on Reform of Australian Government Administration released its report "Ahead of the Game", which recognised the relevance of a robust values framework and a values-based leadership in driving performance. The report recommended that the Australian Public Service (APS) values could be revised, tightened, and made more memorable. The values were updated to follow the acronym "I CARE": Impartial; Committed to service; Accountable; Respectful; Ethical.

Brazil

With support from the OECD, the Office of the Comptroller General of the Union (*Controladoría Geral da União*, CGU) led in 2020 a participative process to identify the core Values of the Federal Public Service in Brazil (*Valores do Serviço Público Federal)*. After an extensive consultation process, civil servants identified which are today the seven Values of the Federal public service: Integrity, Professionalism, Impartiality, Justice, Engagement, Kindness and Public Vocation. Each value comes along with a brief description of what the value means, which provided the opportunity to add similar values that pointed into the same direction.

Colombia

In 2016, the Colombian Administrative Department of Public Administration (*Departamento Administrativo de la Función Pública*, DAFP) initiated a process to define a General Integrity Code. Through a participatory exercise involving more than 25 000 public servants through different mechanisms, five core values were selected: Honesty; Respect; Commitment; Diligence; Justice. In addition, each public entity has the possibility to integrate up to two additional values or principles to respond to organisational, regional and/or sectorial specificities.

Sources: Australian Public Service Commission, https://www.apsc.gov.au/working-aps/aps-employees-and-managers/aps-values; Departamento Administrativo de la Función Pública, Colombia https://www.funcionpublica.gov.co/web/eva/codigo-integridad; (OECD, 2021[26]).

Costa Rica could consider establishing co-ordination mechanisms at territorial level to reach out to municipalities and ensure integrity policies are informed by by the specific contexts and effectively implemented

To achieve impact in building a culture of integrity, reaching the territorial level, particularly municipalities, is key (OECD, 2019[24]). Therefore, Costa Rica could consider establishing co-ordination mechanisms at the territorial level that would complement the high-level co-ordination commission and its sub-commissions at the national level. The rationale for such co-ordination mechanisms consists in promoting the implementation of integrity policies and the MGE in municipalities. As such, these co-ordination mechanisms could include, beyond the CIEV, other relevant integrity actors at territorial level, mirroring the high-level commission recommended above. They would be the link with the commission at the national level and would, in the future, be responsible for steering territorial integrity plans (Chapter 2).

Box 1.4 provides information on similar arrangements in Peru and Colombia, which could inspire a solution responding to the Costa Rican context. In Costa Rica, however, the focus could be placed more on reaching the municipalities and could therefore be established at the level of the seven provinces or at the level of the eight Municipal Councils at district level.

Box 1.4. Peru's and Colombia's co-ordination arrangements at the territorial level

The Regional Anti-corruption Commissions in Peru

Regional Anti-corruption Commissions (*Comisiones Regionales Anticorrupción*, CRA) were established in Peru through Law 29976, which also created the High-level Commission against Corruption (*Comisión de Alto Nivel Anticorrupción*, CAN). The CAN is the national body promoting horizontal co-ordination and advancing the coherence of the anti-corruption policy framework in Peru.

The Peruvian model takes the institutional competences of its members as a fundamental premise for the articulation at the level of the CAN and the CRAs. The focus of both spaces is set on promoting strategic co-ordination and a joint policy formulation between all key integrity actors at the national and regional level. As such, the incorporation of regional governments in the CRA does not pose a threat to the role of control and investigation, but on the contrary, represents an opportunity to generate an integrated regional approach to confront corruption. The idea is that each actor brings in its own expertise, authority and realm of influence to implement activities that are nevertheless co-ordinated and aim to reinforce one another. While the initial outset to create these CRA is laudable by bringing together the different actors responsible for integrity, reforms are needed to make the CRAs more effective and sustainable without only relying on the political will and support of the heads of the entities comprising the CRAs (OECD, 2021[41]).

The Regional Moralisation Commissions in Colombia

Law 1474 of 2011, the Anti-corruption Statute (*Estatuto Anticorrupción*), redefined the legal framework to fight corruption and sought to strengthen mechanisms to prevent, investigate and sanction corruption in Colombia. Created by Law 1474, the Regional Moralisation Commissions (*Comisiones Regionales de Moralización*, CRM) are co-ordination bodies at departmental level. Together with the National Moralisation Commission (*Comisión Nacional de Moralización*, CNM), they are part of the Co-ordination Committee of the National Integrity System created by Law 2016 of 2020. Members are the regional representatives of the Inspector General, the Prosecutor General, the Comptroller General and the Council of the Judiciary (*Consejo Seccional de la Judicatura*) as well as the Departmental, Municipal and District Comptrollers (*Contraloría Departamental, Municipal y Distrital*). The CRMs are in charge of investigating, preventing and sanctioning corruption in the regions.

In many departments, they have achieved better co-ordination among the control authorities. They also have promoted training and awareness-raising activities or carried out joint audits in critical areas. Despite this initial progress, the CRM have not yet been able to deliver their full potential. In particular, their work to prevent corruption is limited as this would require and enhanced dialogue and co-operation between the CRM and the departmental and key municipal governments to co-ordinate corruption prevention activities (OECD, 2021[32]).

Source: (OECD, 2017[29]) and (OECD, 2021[41]), (OECD, 2021[32])

Improve co-ordination between the CGR, the CNEV, internal auditors and the CIEV to fine-tune the methodology for "ethics audits" and to clarify the role of each actor

Costa Rica's Office of the Comptroller General (CGR) has developed a methodology and a set of tools for conducting ethics audits (*Auditoría de la Ética*) to be carried out by internal auditors. A Technical Guide provided by the CGR (*Guía Técnica para el Desarrollo de Auditorías de la Ética*) contains a theoretical section about ethics, why it is important to manage ethics, how it relates to internal control and corporate governance and presents some of the main relevant regulations in Costa Rica. The CGR defines ethics audits as a systematic, objective and professional process for evaluating the functioning and effectiveness of the institution's ethical framework, in order to promote its strengthening (CGR, 2009[44]).

The Technical Guide defines the ethical framework of a public entity as a set of formal and informal factors that conceptualise and materialise the philosophy, approaches, ethical behaviour and management of an institution. It comprises the following three components (CGR, 2009[44]):

- The *ethical programme* includes the formal aspects, such as the statement of institutional values, the code of ethics, the vision and mission, the definition of indicators of ethical management and the existence of a formal strategy for strengthening ethics.
- The *ethical environment* comprises the shared values, beliefs and behaviours of the members of an organisation. It includes observable informal factors such as the organisational climate, the management style, the models of decision-making, the verbal expressions and the behaviours of individuals.
- The *integration of ethics* within the institution's management systems refers to the incorporation of ethical controls in the systems and procedures used in processes that are particularly sensible and exposed to ethical failure and corruption, such as human resources, financial management, administrative contracting and activities with potential political interference.

The Technical Guide further contains checklists for each of the three components of an ethical framework as defined by the CGR and a series of examples of what internal auditors should consider when evaluating ethics in human resources management, services provided to users, procurement processes or relationship of the public organisation with stakeholders, for example. The Technical Guide also recommends an analysis of strengths, opportunities, weaknesses and threats (SWOT) and an ethics maturity model that considers five stages of development of ethics in an organisation (incipient, novice, competent, skilled, expert). The findings resulting from the audit are recorded in a template structured according to the following elements: what was discovered (the situation), what provoked it (the cause), what it should be according to the regulations in force (the criteria), and the consequences it has brought about or could bring about (the effect). There is also space for conclusions, recommendations and reporting strategies for each finding (CGR, 2009[44]).

Overall, complementing the former Institutional Management Index (IGI) and the upcoming Management Capacity Index (ICG), these ethics audits set incentives to work on improving ethical management in public entities. The ethics audits are explicitly mentioned in the Ethics Management Model (MGE) discussed in the previous section. Indeed, the ethics audits could help the public administration to improve effective ethics management through the analysis and recommendations they provide. Furthermore, on the national level, the information provided through the audit reports can inform the policy discussions on integrity policies within the public administration as they could provide a comparative view over several years and across different public entities.

To be able to reach its full potential, however, the ethics audits would benefit from a closer institutional and conceptual alignment with the MGE as promoted by the CNEV and the CIEV. Indeed, the OECD interviews and focus groups indicate that both frameworks have been largely developed separately, even though cross references are made. In particular, while the CNEV framework clearly separates ethics from legal issues and enforcement, and despite the fact that CGR's ethical framework emphasises the "ethical

environment", which stresses the importance of informal factors, the internal auditors, in practice, often still have a bias towards legal compliance and disciplinary sanctions. Interviews also emphasised that the co-ordination between CGR and internal auditors, on the one hand, and CNEV, CIEV and human resource units, on the other hand, are incipient and could be improved.

According to information provided to the OECD, the CGR already has been working on the development of an updated guide, based on comments and feedback by internal auditors and CIEV members. This revision considers, amongst others, a 3-year period for performing a complete evaluation covering the three elements of the institutional ethical framework as defined by the CGR. In the context of this revision, and potentially connected to the recommended revision of the MGE, the CNEV and CGR could form a joint working group to review the Technical Guide for ethics audits in view of aligning criteria and avoiding to send mixed messages to the public administration. Aligned, both instruments could significantly contribute to set incentives and improve today's ethics management towards a modern integrity management. A streamlined framework is also more likely to be taken-up and owned by heads of agencies and public managers.

More generally, and beyond the specific context of reviewing the MGE and the Technical Guide for ethics audits to align concepts, the CGR, internal auditors, CNEV and CIEV would benefit from increased interaction and exchange of information. Ideally, such co-operation could take place in the context of the formal co-ordination commission recommended above, in particular in the technical sub-commission on prevention. However, an increased interaction should be envisaged independently from the uptake of the establishment of such a potential high-level co-ordination commission.

Proposals for action

The recommendations provided in this chapter are an input for the ongoing national dialogue on how Costa Rica could improve the governance of its integrity policy making. As such, the avenues proposed above are directly contributing to inform the implementation of Activity 1.1.1 of the ENIPC, which aims at proposing a governance model to organise and develop the work on integrity, control environment and anti-corruption.

First, Costa Rica should consider taking steps to formalise inter-institutional co-ordination on public integrity policies by:

- Leveraging on the co-ordination achieved during the construction of the ENIPC, Costa Rica could establish a permanent co-ordination commission that includes all relevant stakeholders and a whole of society approach.
- Promoting discussions on more technical levels and ensuring continuity of policies by establishing two technical sub-commissions, one on prevention and one on enforcement, under this co-ordination commission.
- Ensuring the political and technical steering of the co-ordination commission by involving the President of the Republic. The Attorney for Public Ethics could become the Technical Secretariat with the responsibility of the central institutional steering and co-ordination of integrity policies.

Second, while the decentralised approach of Costa Rica has virtues, the country should consider ways to ensure an effective and coherent mainstreaming of integrity policies into the whole public administration, including the institutionally and territorially decentralised public administrations. This could be achieved by:

- Reaching the decentralised public administrations through dedicated integrity units, building on the Institutional Commissions on Ethics and Values (CIEV) and strengthening the National Commission of Values (CNEV).
- Considering to establish co-ordination mechanisms at territorial level to reach out to municipalities and ensure integrity policies are informed by the specific contexts and effectively implemented.
- Improving the co-ordination between the CGR, the CNEV, internal auditors and the CIEV to fine-tune the methodology for “ethics audits” and to clarify the role of each actor geared towards promoting the effectiveness of ethics management in Costa Rica at organisational levels.

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2 Grounding the National Integrity and Corruption Prevention Strategy (ENIPC) of Costa Rica

The chapter analyses Costa Rica's National Integrity and Corruption Prevention Strategy (ENIPC). The ENIPC provides a vision and is a major achievement towards a comprehensive and coherent integrity system in the country. However, it is key to ensure that ENIPC's objective of developing a concrete integrity policy is achieved. This policy should be adopted at the highest level and have clear and measurable objectives, activities and responsibilities. The chapter further proposes avenues to set up a central integrity monitoring system and to ensure a broad evidence-base to inform monitoring and evaluation exercises.

Towards strengthening the evidence-base for the integrity policy and National Integrity Strategy in Costa Rica

A strategy for public integrity is essential for supporting a coherent and comprehensive integrity system. However, a strategy is not an end in itself but rather a means to an end. The process of strategy development is indeed as important as the resulting strategy. An inclusive and rigorous process can help select relevant strategic objectives that are meaningful to citizens and businesses; prioritise and sequence actions in an open manner to address the most crucial integrity risks; and provide the necessary evidence for the interventions that are most cost-effective and likely to have the greatest impact. Strategies are also a way of demonstrating commitment and can be used to establish institutional responsibilities. If however strategies do not lead to visible gains – for example, due to inadequate implementation – they can at best become irrelevant and at worst erode public confidence in national authorities (OECD, 2020[1]).

The OECD Recommendation on Public Integrity states that adherents should "develop a strategic approach for the public sector that is based on evidence and aimed at mitigating public integrity risks, in particular through:

- Setting strategic objectives and priorities for the public integrity system based on a risk-based approach to violations of public integrity standards, and that takes into account factors that contribute to effective public integrity policies;
- Developing benchmarks and indicators and gathering credible and relevant data on the level of implementation, performance and overall effectiveness of the public integrity system" (OECD, 2017[2])

This chapter analyses Costa Rica's National Integrity and Corruption Prevention Strategy (*Estrategia Nacional de Integridad y Prevención de la Corrupción*, ENIPC), launched in August 2021 (ENIPC, 2021[3]). It suggests concrete recommendations, in particular related to ensuring an effective implementation and achievement of its goals. In particular, Costa Rica should ensure that the objective of developing an integrity policy as set out in the ENIPC is achieved, that this policy is adopted at the highest level and provides clear and measurable objectives, activities and responsibilities.

Furthermore, the chapter emphasises the relevance of monitoring and evaluating integrity policies (OECD, 2017[4]). Though interconnected, it is important to distinguish between monitoring and evaluation. Monitoring corresponds to a routine process of evidence gathering and reporting to ensure that resources are adequately spent, outputs are successfully delivered and milestones and targets are met. Policy evaluation, in turn, is a structured and objective assessment of an ongoing or completed initiative, its design, implementation and results. The goal of policy evaluation is to determine the relevance and fulfilment of objectives, its coherence, efficiency, effectiveness, impact and sustainability, as well as the worth or significance of a policy (OECD, 2020[5]; OECD, 2017[4]).

Costa Rica's National Integrity and Corruption Prevention Strategy (ENIPC)

The ENIPC provides a commendable long-term vision built on a broad consensus, but needs to be grounded into a policy adopted at the highest-level that assigns clear responsibilities and resources

Costa Rica's National Integrity and Corruption Prevention Strategy 2021-2030 (ENIPC) emerges from the acknowledgement of the lack of a formal policy or instrument capable of channelling all the efforts and legislations developed on the subject of anti-corruption and integrity. Between October 2019 and December 2020, the Attorney for Public Ethics (*Procuraduria de la Ética Pública*, PEP) and *Costa Rica*

Íntegra (the national chapter of Transparency International) jointly led the development of the ENIPC through a participative process involving civil society, academia and the private sector.

Costa Rica launched the ENIPC in August 2021 and declared it of public interest by Executive Decree 43248-MJP on 27 January 2022. Overall, the ENIPC is organised in 5 components, which contain 46 initiatives in 13 action plans (ENIPC, 2021[6]):

1. **Governance in the fight against the corruption**: The purpose of this component is to establish a governance model for the prevention and enforcement of corruption in the country that articulates State and non-state actors. The component also foresees the development of a National Anti-corruption Policy and a monitoring and evaluation system.
2. **Management of human talent to fight corruption**: This component includes the promotion of ethics in the public administration and the incorporation of the entire public sector to the National System of Ethics and Values through the National Commission of Ethics and Values (CNEV). Furthermore, it aims at establishing a homogenous framework for disciplinary sanctions.
3. **Promotion of social oversight and participation**: The objectives outlined in this component are to be co-ordinated with the Open State Action Plan. It aims at strengthening mechanisms for citizen oversight and participation, at promoting effective reports and protection of whistle-blowers and includes measures aimed at promoting education for integrity and participation.
4. **Corruption risk management in the interaction between the public and private sectors:** The component contains activities aimed at mitigating corruption risks in public procurement and increase awareness and training of integrity standards in the private sector. It also seeks to promote a simplification of procedures for permits and licenses and aims at strengthening the regulations on conflict of interest, lobbying, bribery and trading in influence.
5. **Access to information and accountability**: The last component includes activities on open data and for simplifying administrative procedures for citizens. In addition, Costa Rica has not yet approved a law on access to information. As such, the ENIPC aims at fixing current legal deficiencies and at promoting public servants' skills and abilities for the publication of open data. This component also aims at developing training programmes for civil society on open data and its uses.

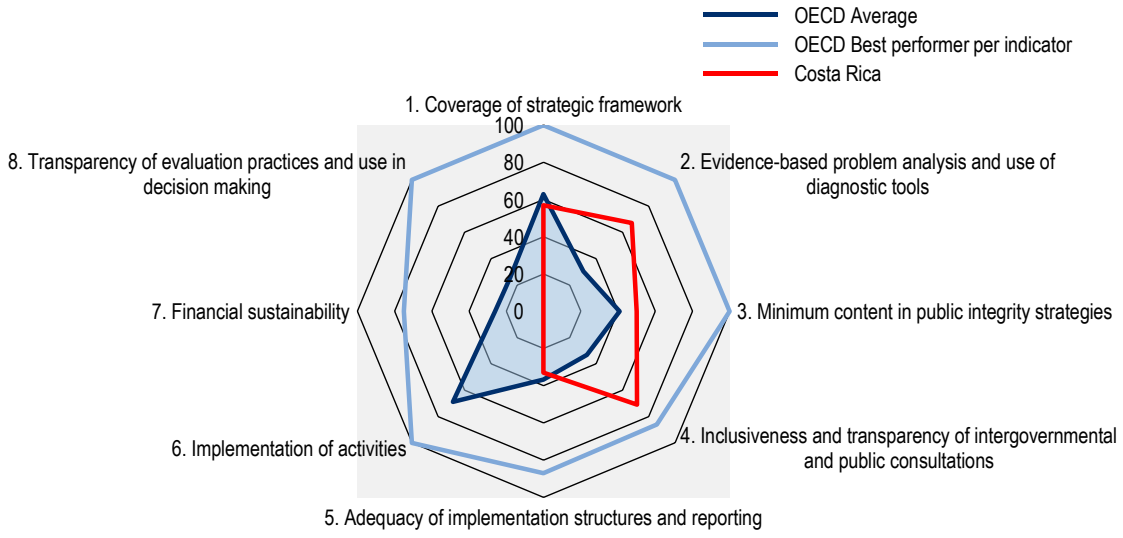
The ENIPC effectively articulates different existing regulatory and institutional arrangements, helps fostering synergies and co-ordinating efforts from relevant integrity actors (Chapter 1) and provides a long-term vision to address the most urgent challenges related to anti-corruption and integrity policies in the country. This long-term vision until 2030 allows an incremental approach in implementing the objectives and to ensure continuity, which is particularly needed in the area of integrity policies.

The strategy can be considered as a major achievement and milestone for promoting integrity and anti-corruption in Costa Rica. Yet, as recognised in the ENIPC, the strategy does not clarify how to institutionalise the much-needed co-ordination to provide coherence and stability to the integrity system; including the involvement of the territorial and institutionally decentralised public administrations. The ENIPC acknowledges this by placing the governance of integrity policies at the top of the five components (ENIPC, 2021[6]). In particular, the ENIPC establishes the need for a National Anti-Corruption Policy, to be elaborated in an open and participative process, and the need for guidelines as well as a follow-up mechanism based on indicators that allow to monitor the implementation and evaluate the impact of the proposed actions.

The OECD Public Integrity Indicators measure, amongst others, the quality of such strategic frameworks. Figure 2.1 provides an overview on the sub-indicators of the OECD Public Integrity Indicator for Principle 3 of the OECD Recommendation on Public Integrity, following criteria established by the OECD Working Party of Senior Public Integrity Officials (SPIO). It shows that the ENIPC can be seen as a good practice with respect to the "inclusiveness and transparency of the intergovernmental and public consultations" that

led to the strategy, with respect to the "evidence-based problem analysis and diagnostic tools underlying the strategy" and the "minimum content of the strategy". In all three sub-indicators, Costa Rica scores above the OECD average. However, the ENIPC scores zero in the sub-indicator measuring the "Transparency of evaluation practices and use in decision making". On the one hand, this is due to the fact that there has not been any previous evaluation as there are no predecessor strategies, but on the other hand also because, while the ENIPC foresees an evaluation, the actions do not list this as a concrete activity. Furthermore, the action plans within the ENIPC also do not include estimates for capital and operational expenditures or costs for specific activities. As the ENIPC is not yet being implemented, the implementation rate is also zero.

Figure 2.1. The OECD Public Integrity Indicator for Strategic Framework



Note: OECD countries used to calculate the OECD average include, Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Republic of Türkiye, United Kingdom, and the United States.
The best performers for each indicator were: Indicator 1, Argentina, Colombia, Czech Republic, France, Hungary, Latvia, and Lithuania; Indicator 2, Czech Republic and Mexico; Indicator 3, Latvia, Lithuania, Mexico, and Poland; Indicator 4, Latvia; Indicator 5, Czech Republic, Latvia, Lithuania, Romania, and the United Kingdom; Indicator 6, Hungary; Indicator 7, Lithuania, and Poland; And, indicator 8, Czech Republic, Latvia, Peru, and Romania.
Source: OECD Public Integrity Indicators, https://oecd-public-integrity-indicators.org/

StatLink https://stat.link/15mjy9

Therefore, as a priority, Costa Rica should work towards establishing the National Anti-Corruption Policy, as established in Activity 1.2.1 of the ENIPC. Ideally, the co-ordination commission recommended in Chapter 1 should lead this exercise. To reflect the preventive focus of this policy, Costa Rica could consider branding it as a National Integrity (and Anti-corruption) Policy. The policy should provide a rationale for the selection of the specific objectives as well as an action plan that reflects the underlying theory of change. Moreover, as will be analysed later in this chapter, Costa Rica should develop and choose realistic and achievable indicators, including inputs, outputs, outcomes and impacts.

The MIDEPLAN could play a key role in promoting integrity through the National Planning System, by ensuring that integrity is included in the National Development Plan 2022-2026

To ensure that goals such as those included in the ENIPC and the forthcoming National Anti-corruption (or Integrity) Policy are translated into concrete actions and impact, they need to trickle down into the strategic and operational plans of relevant integrity stakeholders in Costa Rica. Without such an alignment with the standard national planning, there is a risk that the activities to promote integrity are considered by public entities as an additional burden, without clear resources. The ENIPC could then remain an empty strategy with no relevant impacts.

In Costa Rica, the Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN) leads the country's National Planning System. This system is organised in multi-level plans: the Institutional Strategic Plans (*Planes Estratégicos Institucionales*, PEI), Institutional Operational Plans (*Planes Operativos Instituciones*, POI), the Sectoral Plans and the Plan-Budget Articulation Matrix (*Matriz de Articulación Plan-Presupuesto*, MAPP). On top of that, by Law 8131, the National Development Plan (*Plan Nacional de Desarrollo*, PND) is the strategic framework that guides all public policies and plans, according to the level of autonomy of the related institutions.

The current 2018-2022 PND does not contain any reference to integrity and anti-corruption issues. In the past, the 2015-2018 PND stated that it is essential to promote a national culture of ethics, transparency and accountability and included the issue as one of the three strategic pillars ("*an open, transparent, efficient, government in a frontal fight against corruption*"). In addition, the 2015-2017 Open Government Partnership Action Plan stated that the fight against corruption is a priority area (OECD, 2016[7]). The fourth Open State Action Plan of Costa Rica 2019-2022 commits to strengthening citizen capacities and mechanisms for the prevention of corruption in the public administration by providing open data.

Based on the direction of the new elected government, the MIDEPLAN prepares the new National Development Plan 2022-2026 within the seven months following the start date of the government period on 8 Mai 2022. Therefore, the new PND 2022-2026 offers a unique opportunity to include strategic priorities related to public integrity, linked to the ENIPC. In particular, through the MIDEPLAN, Costa Rica could include into the PND 2022-2026 the goal of working towards a public integrity system and establish the following two priorities:

- The commitment to improve coherence and co-operation amongst actors of the integrity system through a co-ordination mechanism that could be inspired by the recommendations provided in Chapter 1 of this Integrity Review
- The open and participative elaboration of the National Anti-corruption (Integrity) Policy as prioritised by the ENIPC and its incorporation into relevant plans of the National Planning System.

The National Development Plan could encourage subnational level to develop their own integrity policies, particularly with the aim of creating synergies through the territorial development plans

As mentioned in Chapter 1, to achieve impact in building a culture of integrity, reaching the territorial level, particularly municipalities, is key. Indeed, the risks of corruption compared to the national level are often different and arguably could be higher at the territorial l level for various reasons. First, a significant share of public funds is spent on subnational levels. Given this level of spending on public investment and procurement, ensuring integrity and anti-corruption at subnational level is critical to make the best use of public funds. Second, subnational governments' responsibilities for the delivery of typically a large share of public services (e.g. water and sanitation, waste management, licences and permits, education, health) increases the frequency and directness of interactions between public authorities, citizens and firms. These

interactions create both opportunities, especially as they can facilitate local accountability and participation, and risks for integrity (OECD, 2021[8]).

The recent COVID-19 crisis has amplified existing corruption risks, while obliging governments to take quick decisions and releasing significant public funds to help communities at risk and mitigate the socio-economic consequences of the crisis (OECD, 2020[9]; OECD, 2020[10]). Given their responsibilities, municipal governments are at the frontline of the crisis management and recovery, while being confronted by COVID-19's asymmetric health, economic, social and fiscal impact (OECD, 2021[11]).

At the same time, pursuing change at the territorial level through contextual integrity policies offers unique opportunities. Given the responsibilities of local governments in service delivery and local development, integrity policies also may be able to achieve visible results for citizens, which allows to contribute to building trust in government and to increase the political buy-in from leaders to continue with reforms. Territorial governments are likely to be better placed to identify corruption risks and opportunities for more effective integrity and anti-corruption measures adapted to the regional context. One-size-fits-all solutions imposed from above are not recommendable. Nonetheless, a co-ordinated approach and clearer guidance from the central administration would contribute to a more functional integrity system, by ensuring coherence of messages and measures.

In Costa Rica, several institutions, such as the Attorney for Public Ethics (*Procuraduria de la Ética Pública*, PEP), the Comptroller General of the Republic (*Contraloría General de la República*, CGR), the National Commission for Ethics and Values, (*Comisión Nacional de Ética y Valores*, CNEV) or the Ombudsman (*Defensoría de los Habitantes de la República de Costa Rica*, DDHH) carry out activities to raise awareness and to reinforce public integrity in Costa Rica's regions. For example, the PEP has worked with the CGR to conduct audits of anti-corruption policies in six municipalities. It has also worked, alongside the Deputy Prosecutor for Probity, Transparency and Anti-Corruption (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FAPTA), on the "Municipal Citizen Observatory" (*Observatorio Ciudadano Municipal*), assisting citizens to demand transparency in municipal management. Moreover, the PEP has worked with the IFAM on a training programme for new municipal authorities (for the 2020-2024 period), which included a course in ethics and probity in the public function. In turn, the CNEV provides feedback to the municipalities that have implemented Institutional Commissions on Ethics and Values (*Comisiones Institucionales de Ética y Valores, CIEV*) (see Chapter 1).

However, as described in Chapter 1 and despite these efforts, Costa Rica faces significant challenges in ensuring a coherent implementation of integrity policies at territorial levels. During the interviews conducted by the OECD, civil society organisations stressed that the planning and prioritisation of integrity policies at the subnational level, on average, is still weak. In fact, most of the consulted stakeholders for this Integrity Review agreed that the territorial level was mainly unaware of the ENIPC at the time these interviews were carried out (July 2021), which may indicate that the approach for elaborating the ENIPC could have involved municipalities in a more systematic way. Many interviewees shared the view that the lack of integrity policies at territorial levels stem from a weak management culture, overly political discussions over technical issues, budget constraints and a lack of commitment by local leaders.

As such, Costa Rica should work more closely with the territorial decentralised administration to develop their own integrity policies. The recommendation in Chapter 1, which is also included in the ENIPC, to extend the Ethics Management Model (*Modelo de Gestón Etica*, MGE) to municipalities would be an important step towards a more effective implementation of integrity policies, as the MGE requires to carry out diagnostics and develop action plans (Box 1.2 in Chapter 1).

In addition, MIDEPLAN could provide guidance on how to develop plans at territorial level that reflect local priorities, needs and opportunities while offering a sufficient degree of coherence across the country. In particular, the new National Development Plan could require municipalities to implement the MGE and to include integrity issues in their local development plans and/or the Cantonal human development plans. Entities at the national level such as MIDEPLAN, the PEP and the CNEV could provide support.

Municipalities should be given the appropriate resources (human, financial) to fulfil their responsibilities and the national government should work towards promoting mechanisms for co-operation between subnational levels of government (OECD, 2017[2]), as recommended in Chapter 1.

Strengthening the evidence-base for integrity policies in Costa Rica

A central integrity monitoring system, which produces regular reports on the advances of the implementation of the ENIPC, could help to manage and communicate progress towards integrity goals

A key element of the ENIPC is the creation of a Monitoring and Evaluation (M&E) system to inform citizens about the level of implementation of the strategy. This M&E system allows promoting the understanding of the expected goals and results pursued by the ENIPC and should respond to the articulated vision to allow, from a systemic perspective, monitoring the implementation by governmental, private sector and civil society actors and to regularly evaluate the achievements.

An M&E system is a crucial element both for ensuring an effective implementation and as an accountability and communication instrument to citizens and public officials alike. The M&E system should translate each strategic goal stated in the ENIPC into clear policy objectives and actions, including time frames, responsibilities and resources. These, in turn, should be translated into measurable indicators that will keep track of the progress towards the main strategy goals (OECD, 2017[4]). As such, the M&E system should be developed at the same time as the National Anti-corruption (Integrity) Policy.

The monitoring process should be based on:

- Indicators that measure aspects of the implementation of integrity policies, focused on inputs, activities and products.
- Indicators that measure the level of achievement of the desired outcome and intermediate outcome and, as far as possible, at impact level.

The indicators that measure aspects related to the implementation process capture features that are under the control of the implementing agency or institution. In turn, outcome indicators measure the achievement of the goals to which the implemented policy wanted to contribute. While policy makers usually do have some control over the implementation process, they do not have complete control over the outcome as many exogenous variables can interfere, contribute or undermine the achievement of the policy goal. While public institutions can be hold accountable for the implementation and the achievement of committed products, the discussion around outcome need to be more nuanced and consider this attribution gap (OECD, 2017[4]).

Furthermore, the breakdown of policy objectives into activities contribute to underpinning the monitoring exercise taking into account clear institutional responsibilities. Even though monitoring should be carried out by every actor that is responsible for implementing the actions and should be part of the daily routine, a central integrity monitoring system can contribute in the collection, unification and analysis of decentralised information and data. As such, a central monitoring system contributes to a macro analysis regarding the development, the progress and the delays of the implementation of the activities as well as on the key achievements. A central monitoring system thus contributes to obtaining a coherent and complete picture that facilitates decision-making.

The central governing body that steers the co-ordination commission recommended in Chapter 1 to articulate the country's integrity system should lead this central monitoring system. Chapter 1 further recommended that this function should be performed by the PEP as the Technical Secretariat of the co-ordination mechanism. In addition, as part of the proposed co-ordination commission, the MIDEPLAN can

ensure that the monitoring of the progress of integrity policies is incorporated into the National Planning System.

The central monitoring system could draw the data from different sources, which will be discussed in the next section. The indicators should enable to inform timely actions by management. Indeed, the core objectives of monitoring is to identify the challenges and opportunities to inform decisions and allow corrective adjustments during the implementation. As such, monitoring should be understood as a mechanism that contributes to and effective public management (OECD, 2017[4]). To enable this, monitoring needs to be institutionalized by linking the monitoring process to the decision-making and the implementation process. Clear mechanisms and procedures to discuss progress and implementation bottlenecks should be established. For example, regular inter-institutional round tables among the stakeholders of the ENIPC should be encouraged. Again, ideally, this would take place in the sub-commission on prevention recommended in Chapter 1.

Finally, the development of a central monitoring system can enable the generation of a benchmarking system that compares the implementation status of public entities. Such a benchmarking can stimulate and motivate the entities to implement effectively the actions foreseen in the ENIPC or future integrity policies. Indirectly, the benchmarking can create a yardstick competition between public entities, or, at the territorial level, between municipalities. A central monitoring system then sets incentives for a continuous improvement. These incentives are even stronger when the benchmarking is public.

Several countries are implementing such public monitoring systems (Box 2.1). However, due care must be taken that comparisons make sense and do not penalise smaller municipalities or public entities with less resources and capacities. In addition, the pressure generated by benchmarking could also lead to undesired behaviour aimed at gaming the system and window-dressing (OECD, 2017[4]). To mitigate this risk, monitoring should not be communicated as a control mechanism that aims at naming and shaming those who perform less well. On the contrary, the monitoring exercise should be communicated clearly as a joint and constructive exercise that enables open and transparent conversations amongst stakeholders to overcome possible challenges.

Box 2.1. Integrity monitoring practices from selected countries in Latin America

Brazil

The Panel of Public Integrity (*Painel Integridade Pública*, PIP) allows citizens to check information online about the structure, implementation and monitoring status of public integrity programmes in entities and organisations of the Brazilian Federal Government. The PIP is under the responsibility of the Office of the Comptroller General of the Union (*Controladoría Geral da União*, CGU).

Since 2017, all public entities of the federal administration are required to implement integrity programmes. The PIP contains several indices that allows understanding the degree to which agencies have adopted them. For example, the PIP contains information on how many entities have implemented integrity management units (*Unidade de Gestao de Integridad*, UGI), if the agencies have satisfied with all due requirements of UGI designations, if agencies have mechanisms to analyse nepotism or conflicts of interest, whether the agencies have areas responsible for conducting disciplinary proceedings, among others. The PIP also publishes the approved integrity plans of all entities which have submitted it to the platform.

Colombia

The National Anticorruption Index (*Índice Nacional Anticorrupción*, INAC) analyses the institutional capacities of public entities in the fight against corruption. It is an index of indices that is built using official information of national entities. The INAC evaluates the strengths and weaknesses in terms of transparency, citizen participation, accountability, public integrity and disclosure of public information, including financial, budgetary and contractual information.

The INAC is a project of the Secretariat of Transparency (*Secretaria de Transparencia*, ST). The ST not only estimates the INAC but provides also several indicators of sanctions regarding crimes against the public administration, such as corruption, an indicator of how much progress there is with the compliance of the Comprehensive Public Anti-corruption Policy, an Open Government Index, as well as results of surveys regarding political culture and performance of public servants.

Peru

The Secretariat of Public Integrity (*Secretaría de Integridad Pública*, SIP) developed the Integrity Model (*Modelo de Integridad*) as part of the National Plan of Integrity and Fight against Corruption (*Plan Nacional de Integridad y Lucha contra la Corrupción*). The Model contains a set of guidelines, mechanisms and procedures to strengthen public entities in their internal capacity to prevent and punish corruption, as well as to strengthen their practices against unethical practices. As part of this programme, the SIP developed an Index of preventive capacity against corruption (*Índice de Capacidad Preventiva*, ICP) in which the advancement of the Integrity Model is evaluated.

The SIP estimates in the ICP in how far the nine components and its respective 36 subcomponents of the integrity model have been implemented. The main components are Senior Management Commitment; Risk Management; Integrity Policies; Transparency, open data and accountability; Internal and external control and audit; Communication and training; Complaint channels; Oversight and monitoring of the integrity model; and a person in charge of the integrity model.

Source: Compiled by OECD based on the websites from Brazil, Colombia and Peru. For Brazil and Peru, see also (OECD, 2021[12]), (OECD, 2021[13]) and (OECD, 2019[14]).

Costa Rica should establish clear procedures and criteria for regular and independent evaluations of integrity policies that allow for continuous learning and improvement

Policy evaluation is a critical element of sound public governance. Policy evaluation can help ensure public sector effectiveness and improve the quality, responsiveness and efficiency of public policies and services. Evaluation is essential to draw lessons and to provide an understanding of what works, why, for whom, and under what circumstances. It connects policies, policy makers and citizens, helping ensure that decisions are rooted in trustworthy evidence and deliver desired outcomes (OECD, 2020[5]).

The ENIPC foresees an evaluation but does not provide more details. Therefore, Costa Rica could clarify how and when the ENIPC or future integrity policies will be evaluated. In addition to insights provided by the CGR through their external audits, which could consider auditing specific aspects of integrity policies and their performance, it is recommendable to plan for an external evaluation exercise. An independent actor or organisation should carry out this evaluation, while it could be commissioned by the central governing body that is responsible for the central monitoring system recommended above. The evaluation should aim at drawing lessons learnt by evidencing key achievements and weaknesses. In addition, the evaluation process should provide concrete recommendations to inform the choices of policy makers in establishing future strategic steps. For example, Romania recently commissioned the OECD to evaluate the National Anti-corruption Strategy 2016-2020 of the country (OECD, 2021[15]).

The methodology used to evaluate the achievement of the envisaged results of the ENIPC or the future policy and strategies could follow the OECD-DAC evaluation criteria and take into account the following dimensions:

- **Relevance**: Where the ENIPC (or the future policy) designed to respond to country needs and priorities? To what extend are the objectives still valid? Do the stakeholders feel a sense of ownership?
- **Coherence**: Was the ENIPC (or the future policy) coherent with other governance reforms and policies in relevant key areas (external coherence)? Were the different objectives of the ENIPC (or the future policy) designed in a way to reinforce one another and create synergies and were the activities relevant to contribute to the achievement of the results and the objectives (internal coherence)?
- **Effectiveness**: To what degree has the ENIPC (or the future policy) achieved the envisaged goals and implemented the activities (level of implementation)? What were the major factors influencing the achievement or non-achievement of the objectives?
- **Efficiency**: How well were the available resources used to achieve the objectives of the ENIPC (or the future policy)? Where the objectives achieved on time?
- **Impact**: What differences did the ENIPC (or the future policy) make? What were the positive changes and could some unintended consequences be observed?
- **Sustainability**: How did the ENIPC (or the future policy) build on earlier efforts to prevent and combat corruption and how likely are the implemented changes to last over time?

Leverage the data and information from the M&E system of the ENIPC to enable more effective communication strategies

Communicating regularly and clearly about the progress in the achievement of goals can contribute in building trust. Communication also contributes to strengthening accountability processes, to supporting fact driven dialogue between stakeholders and can enhance evidence-based decisions. The data from monitoring and results from evaluations can help policy makers in Costa Roca to develop effective communication strategies. Communication can be stimulated for example through annual or biannual public reports and through dedicated websites.

However, Costa Rica should design these communication strategies carefully. For instance, raising the issue of corruption and the costs related to it may lead to undesired consequences. Especially in a context where corruption is already very present in the public debate and media, awareness raising campaigns on corruption may just increase the already high awareness for an existing problem and thereby confirming the impression that corruption is widespread. Indeed, research has shown that unethical behaviour is contagious and can lead to a "self-fulfilling prophecy" effect, as the perception of corrupt behaviour as a common practice may facilitate rationalising unethical behaviour (Gino, Ayal and Ariely, 2009[16]; Robert and Arnab, 2013[17]; Ajzenman, 2021[18]; Bicchieri and Xiao, 2009[19]; Corbacho et al., 2016[20]; OECD, 2018[21]). Research carried out in Costa Rica confirmed this risk. An information experiment embedded in a large-scale household survey conducted in Costa Rica showed that changes in beliefs about corruption, induced by displaying the increasing percentage of Costa Ricans who have personally witnessed an act of corruption, increased the probability that a respondent would be willing to bribe a police officer (Corbacho et al., 2016[20]).

Such dangers of misleading communication can be prevented by carefully designing relevant campaigns that focus more on the achievements of integrity policies, showing that change is possible. Of course, such results need to be real to avoid promoting cynicism, decaying trust in government and disconnecting citizens from constructive political engagement (Bauhr and Grimes, 2014[22]).

To monitor and evaluate integrity policies, Costa Rica should draw from different data sources and identify gaps for areas where data is not available

Identify a set of indicators to measure progress in implementation and achievement of the goals stated in the ENIPC

As stated in the ENIPC, Costa Rica should focus on identifying a set of indicators that measure the implementation of concrete actions and achievement of desired goals and outcomes. For this, a variety of indicators will be required. Taking into account various indicators from different sources can give the policy maker a more holistic and integrated view of what it is really happening. Table 2.1 presents examples of different data sources that can be used as indicators.

Table 2.1. Potential data sources for indicators measuring public integrity policies

Data Source	Description	Examples
Administrative Data	Quantitative information compiled routinely by government institutions, international organisations or civil society groups.	• Number of complaints received in a given time frame • Data on the use of web-based tools for interacting with citizens • Percentage of asset declarations that result in an investigation • Percentage of middle management who received training on conflict of interest management
Public Surveys	Information gathered through surveys of the general public, which can be used to generate ratings for indicators based on public perceptions or experiences.	• Questions asking for the perceived corruption overall or in different government institutions or services • Questions asking for victimization, e.g. Percentage of population who paid a bribe to a public official, or were asked for a bribe by these public officials, during the last 12 months
Expert Surveys	Information gathered confidentially from individuals with specialized knowledge based on their experience or professional position. The choice of experts is crucial and must be tailored to the questions being asked.	• Extend to which experts consider a given policy measure or mechanism as effectively implemented in practice, e.g.: o In practice, the existing whistleblowing protection regulation are effective in protecting whistleblowers from retaliation at the workplace. o In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

Data Source	Description	Examples
Staff Surveys	Information gathered through surveys of employees/civil servants, which can be used to generate ratings for indicators based on public perceptions or experiences. Staff surveys can be covering a sample from the whole civil service or be limited to samples from one or more specific public entities.	• Are you confident that if you raise a concern under the Public Ethics Law in [your organisation] it would be investigated properly? • People who take ethical shortcuts are more likely to succeed in their careers than those who do not • The organisation makes it sufficiently clear to me how I should conduct myself appropriately toward others within the organisation • My supervisor sets a good example in terms of ethical behaviour
Enterprise Surveys	Information gathered through surveys of private companies, which can be used to generate ratings for indicators based on public perceptions or experiences. Enterprise surveys can be disaggregated by sectors, or size, for instance.	• Questions asking for the perceived corruption overall or in different government institutions or services, e.g. Percentage of firms identifying corruption as a major constraint • Questions asking for victimization, e.g. Percentage of businesses that paid a bribe to a public official, or were asked for a bribe by these public officials, during the last 12 months
Focus Groups	Focus groups bring together structured samples of a range of social groups to gather perceptions in an interactive group setting where participants can engage with one another. Focus groups can be quicker and less costly than large representative surveys.	• What are the main challenges faced by private firms wishing to report irregularities in public procurement processes? • Level of awareness of middle management of fraud and corruption risk management • Experiences of vulnerable citizen groups with access to public services
Observations	Data gathered by researchers or field staff. This information can be collected through in-depth case studies or systematic observations of a particular institution or settings.	• Review of the regularity and completeness of risk management practices • Percentage of follow-up and implementation of internal audit reports
Documents & Legislation	Information culled from written documents. Can be used to verify the existence of certain regulations, products and procedures.	• Do public entities periodically publish data on X? • Availability of reporting of total cost and physical progress of major infrastructure projects.

Source: (OECD, 2017[4]) based on information adapted from (United Nations, 2011[23]) (Parsons, 2013[24]) (Kaptein, 2007[25]).

Since the adoption of the OECD Recommendation on Public Integrity, a Task Force of the Working Party of Senior Public Integrity Officials (SPIO) has been developing a framework for a set of indicators (Public Integrity Indicators, PII) to measure the successful implementation of the OECD Recommendation on Public Integrity. The framework establishes standard indicators for the preparedness and resilience of the public integrity system at the national level to prevent corruption, mismanagement and waste of public funds, and to assess the likelihood of detecting and mitigating various corruption risks by different actors in the system. These PII combine sub-indicators establishing minimum legal, procedural and institutional safeguards for the independence, mandate and operational capability of essential actors in the integrity system with more outcome-oriented sub-indicators drawing on administrative data and surveys. The PII apply a mixed methods approach, drawing on both administrative data and big data provided directly by governments and surveys (Box 2.2). Costa Rica, as an OECD member, is part of the data collection for the PII, which enables the country to compare its performance on key integrity issues with other countries. Costa Rica could consider including some of the sub-indicators of the PII into its own M&E framework.

Box 2.2. The mixed methods approach of the OECD Public Integrity Indicators

Better indicators require moving away from high-level composite indicators based on expert judgement. As such, the OECD Public Integrity Indicators are moving towards greater use of two other data sources:

- **Administrative data, including big data and data analytics**: Standardisation and better use of administrative data are keystones for better measures of corruption, anti-corruption, and the public integrity system. So far, this has been a largely unexplored frontier at the international level, but national authorities use such data in their own strategies because it is precise, objective and reliable. Several Public Integrity Indicators draw on administrative data, and one uses semantic analysis tools (text mining).
- **Survey data by national statistics offices and other state administration bodies**: The OECD has experience developing public integrity modules for surveys administered by national statistical offices (general population and business surveys) and the central government unit responsible for HRM policy (staff surveys and/or surveys of users and providers of public services). These can be part of larger governance modules or stand-alone victimisation surveys. Such experience-based data is crucial to capture outcomes.

To build the evidence-base for monitoring and evaluating the ENIPC as well as the forthcoming National Anti-corruption (Integrity) Policy, Costa Rica could follow a similar approach based on different data sources. Citizen and staff survey are discussed in the sections below. In addition, Costa Rica can also build on existing indicators in the country, which could be used to measure some of the desired changes, objectives and activities of the ENIPC as well as to identify gaps and inform future strategies and policies.

In particular, the following three sources of information could be used to identify relevant indicators, or, if needed adapted to include additional aspects relevant for the ENIPC:

- The new Management Capacity Index (*Índice de Capacidad de Gestión*, ICG) developed by the CGR (Box 2.3) provides amongst others relevant information on risk management and ethics which could be used to monitor the implementation of related policy objectives in the ENIPC and be aligned with the recommended review and expanded implementation of the Ethics Management Model (Chapter 1).

- To strengthen the evaluation mechanisms for the promotion of transparency and accountability of municipalities, the CGR developed the Management Index of Municipal Services (*Índice de Gestión de Servicios Municipales*, IGSM). The IGSM looks into two broad categories: the Basic Municipal Public Services and the Diversified Municipal Public Services. The former are provided by all 83 local governments, while the latter are provided by a smaller and variable number of municipalities (CGR, 2021[26]).
- The Transparency Index (*Índice de Transparencia del Sector Público*, ITSP), provided by the Ombudsman in co-ordination with the Center for Research and Training in Public Administration (*Centro de Investigación y Capacitación en Administración Pública*) of the University of Costa Rica, evaluates four different items: access to information, accountability, citizen participation and open government data. The access to information section evaluates the quality and the type of information that it is published on the institutional website. The accountability section evaluates if the published information is accurate and related to the institutional objective, competencies and responsibilities. The citizen participation section evaluates the quality of the channels that citizens have to interact and participate in the institutional planning, control and evaluation process. Finally, the open government data section evaluates if the datasets published in the institutional web page

are in compliance with the open data format, allowing their use, reuse and distribution. According to interviews conducted by the OECD for this Integrity Review, the Ombudsman is considering a revision of the ITSP, which could provide an opportunity to tailor it more closely to the related objectives of the ENIPC.

Box 2.3. From setting the foundations towards promoting effective public management practices: Costa Rica's new Management Capacity Index (ICG)

Until 2019, the Comptroller General of the Republic of Costa Rica (*Contraloría General de la República*, CGR) used the Institutional Management Index (*Índice de Gestión Institucional*, IGI) to measure some core aspects of public management. The IGI aimed at ensuring that the public sector implements management processes and structures in eight public support processes (planning, financial measures, internal control, procurement, budget, information technologies, user service and human resources of public institutions), aimed at three objectives: efficiency, transparency and prevention of corruption. The results of this index were published through a ranking system, where each assesses institution receives a grading score (CGR, 2019[27]). Although these basic aspects themselves do not guarantee success in the institutional operation, they can determine a minimum threshold in accordance with the regulatory framework, technique and good practices.

After 2019, the CGR determined that the public sector had reasonably advanced in meeting these formal aspects and turned towards promoting more effective practices. Together with a new framework, the Integrated Public Management Model (*modelo integrado de gestión pública*, MiGPS), this led to the Management Capacity Index (*Índice de Capacidad de Gestión*, ICG). The new ICG measures practices in four dimensions: Strategy and structure; Leadership and culture; Processes and information; Competencies and equipment. All dimensions aim at strengthening the institutional management capacity, which refers to the articulation and preparation of the available resources of each entity to fulfil its functions, its objectives and achieve the envisaged results. The ICG was applied for the first time in 2021, after a pilot carried out in 2020 to test the tool and the models. The CGR plans to carry out the measurement every two years. While all dimensions and several practices are relevant from the public integrity perspective, two aspects from the 2021 report are worth emphasising (Table 2.3).

Table 2.2. Management Capacity Index on Risk Management and Ethical Behaviour, 2021

Dimension "Strategy and structure" Practice 8 "Orientation of institutional action towards Risk management"	Dimension "Leadership and organisational culture" Practice 4 "Driving towards ethical principles and behaviours"
• This practice seeks to identify, evaluate and manage the risks institutions for agile and timely decision-making oriented to the achievement of objectives. 43.1% of the institutions do not have of a comprehensive risk management strategy, considering the corruption risks. • In addition, only 73.8% of the institutions define the level of acceptable institutional risk (risk appetite) as well as the profile of risk and risk capacity at the institutional level.	• This practice is rooted in the organisational culture, the principles and ethical values that should govern the behaviour of members of the organisation. • 76.0% of the institutions make efforts to strengthening the ethical culture. • 68.5% of the institutions make efforts to promote that staff internalise how to resolve conflicts of interest, and identifies it as one of the issues that requires greater effort in Costa Rica. • 79.2% of the institutions promote ethical behaviour in accordance with institutional values, attributed to the gradual consolidation of ethics commissions (CIEV) in public entities.

Source: (CGR, 2021[28])

Source: Based on information provided by the Office of the Comptroller General of Costa Rica, (CGR, 2019[27]) and (CGR, 2021[28]).

Data from surveys of public officials could provide input on how integrity policies contribute to a culture of integrity in Costa Rica´s public sector

Staff surveys allow policy makers to know if integrity policies change perceptions, experiences, attitudes and behaviours of public officials and contribute to measure the policy goal of ensuring a culture of integrity within the public sector. Surveys of public officials are also useful to conduct diagnostic assessments that precede and inform the design of integrity public policies. A centrally administered public sector staff survey that covers various aspects of public employment has the advantage that the data that it collects can be correlated and compared across entities.

Many OECD countries monitor their integrity policies using such staff surveys (Table 2.3). In the Netherlands, for example, a comprehensive staff survey is at the core of agenda setting for future integrity policies (Box 2.4). In the United Kingdom, the Civil Service People Survey yearly surveys around 300 000 respondents from 98 organizations. This survey provides a benchmark across different public entities. Among the several aspects covered, employee engagement, trust in leadership and fair treatment can be highlighted. A significant variation among these components could imply an integrity risk. Moreover, the overall score of the answers can indicate not only a general picture of the UK Civil Service, but also could highlight the challenges within individual organisations. Finally, the survey allows cross sectional analysis driven by the repetition of questions in regular intervals. Similar information is collected in Colombia, where the National Statistical Office (*Departamento Administrativo Nacional de Estadística*, DANE) carries out an annual Survey on National Institutional Environment and Performance (*Encuesta de Ambiente y Desempeño Institucional*, EDI) that integrates questions related to specific integrity initiatives.

Table 2.3. Staff surveys inform evidence-based integrity policies in OECD countries

	'Integrity at the workplace' is assessed in a centralised employee survey across the whole central public administration	Employee survey polls are being used to evaluate the integrity system
Australia	●	●
Austria	○	●
Belgium	○	●
Canada	●	●
Chile	○	●
Czech Republic	○	○
Denmark	○	○
Estonia	●	-
Finland	●	○
France	○	○
Germany	○	○
Greece	○	○
Hungary	○	○
Island	●	●
Ireland	○	○
Israel	●	-
Italia	○	○
Japan	○	○
Korea	○	●

	'Integrity at the workplace' is assessed in a centralised employee survey across the whole central public administration	Employee survey polls are being used to evaluate the integrity system
Latvia	●	-
Luxemburg	○	-
Mexico	●	●
Netherlands	○	●
Nueva Zealand	○	●
Norway	●	●
Poland	○	○
Portugal	○	-
Slovak Republic	○	○
Slovenia	○	○
Spain	○	○
Sweden	○	●
Switzerland	○	-
Republic of Türkiye	○	●
United Kingdom	●	●
Unites States of America	●	●
● Yes	11	15
○ No	24	14

Note: Where data was unavailable this is indicated by -.
Source: OECD (2016), Strategic Human Resources Management Survey, OECD, Paris & OECD (2016), Survey on Public Sector Integrity, OECD, Paris.

Box 2.4. Integrity Monitor in the Dutch public administration

Since 2004, the Dutch Ministry of the Interior regularly observes the state of integrity in the Dutch public sector. To this end, political office holders, secretaries-general, directors and civil servants are surveyed in central government, provinces and municipalities using mixed methods, including large-sample online surveys and in-depth interviews.

The Integrity Monitor supports Dutch policy makers in the design, implementation and communication of integrity policies. The results of each Monitor are reported to Parliament. The Ministry of Interior uses the Monitor to raise ethical awareness, detect implementation gaps and engage decentralised public administration in taking responsibility for integrity regulations. Insights from past Monitor waves have helped to identify priorities for anti-corruption efforts and shift integrity policies from prohibition to creating an organisational culture of integrity.

Source: Presentation by Marja van der Werf (Dutch Ministry of Interior and Kingdom Relations) given at the meeting of the OECD Working Party of Senior Public Integrity Officials (28 March 2017, Paris). Lamboo T. & De Jong, J. (2015): Monitoring Integrity. The development of an integral integrity monitor for public administration in the Netherlands. In Hoekstra, A. & Huberts, L. Gaisbauer, I. (eds.), 'Integrity Management in the Public Sector. The Dutch Approach'.

Costa Rica could therefore consider conducting a periodic, centrally administered survey of public officials throughout the national public administration. The MIDEPLAN could administer this survey on a periodic basis to all national public officials working in the public administration. Alternatively, the National Institute of Statistics and Census of Costa Rica could administer the survey. The survey could include several questions relevant to public sector human resource management in addition to questions related to integrity. The results of the survey could provide a benchmark and be used to inform integrity risk assessments in the national public administration.

Either to complement or instead of a centrally administered survey, Costa Rica could also conduct more limited, ad hoc staff surveys in the whole national public administration, in specific sectors or in specific public entities to inform integrity policy making. However, while they can be relevant for purposes of policy design or communication, for example, such ad hoc surveys lack the advantages of a centrally administrated and regular survey that can be used for benchmarking purposes and for evaluating the longer-term progress in integrity goals (OECD, 2019[29]).

In fact, first steps have been taken in the implementation of staff surveys in Costa Rica. The CGR has been conducting, with no systematic periodicity, the National Corruption Prevention Survey (*Encuesta Nacional de Prevención de la Corrupción*, ENPC), a measurement instrument that surveys public servants and citizens. The survey asks respondents about their opinion and personal experience related to actions to prevent corruption, their perception related to procedures susceptible to corruption, culture of prevention and general perception of corruption. This survey contains two different modules each aimed at different audiences (see Box 2.5 for public officials, Box 2.7 in the next section for citizens).

The public official module inquires about the organisational ethics culture and the values by measuring variables related to the control environment. However, the CGR expressed that they do not collect or analyse the data from the ENPC survey for monitoring purposes. Rather, each institution is responsible for monitoring its control environment. The CGR uses the collected data to comply with its external oversight mandate. Nonetheless, in the future, questions today contained in the ENPC could inform the monitoring and evaluation process of the ENIPC.

Box 2.5. Costa Rica's National Corruption Prevention Survey 2020 – Public Officials Module

In February 2020, the Comptroller General of the Republic (*Contraloría General de la República*, CGR), conducted the National Corruption Prevention Survey (ENPC - 2020), to explore the opinions of citizens (questionnaire 1) and public officials (questionnaire 2) on the prevention of corruption in the public sector. The information was obtained through a telephone interview, based on sampling frames aimed at citizens and public officials.

The following results from the module applied to public officials can be highlighted:

- 87.0% of public officials consider that corruption harms them in their daily lives, mainly due to the misuse of resources (12.5%), the impact on their personal finances (11.2%) and the decrease in job opportunities (8.1%).
- Of the total number of respondents, 49.1% indicated that they were aware of actions in their institution to prevent corruption, the main ones being education and promotion of values (23.4%), the application of controls (17.2%) and the application of laws and regulations (7.2%). Compared to the results obtained in 2016, there is an increase in the number of public officials surveyed who indicate that they know about the actions taken by the institution in which they work to prevent corruption (46.0% in 2016).
- Regarding the culture to prevent corruption, 58.3% of the civil servants indicate that the citizenry is the main responsible for preventing corruption, followed by the public sector (24.1%) and

private companies (0.8%). In addition, the most relevant values when undertaking preventive actions are perceived to be honesty (45.4%), ethics (11.3%) and probity (10.9%).

- Regarding knowledge of acts of corruption, 30.7% reported having witnessed a case of corruption in their institution; of these, 72.1% filed a report. Fear of reprisals (45.5%), not seeing change (18.2%) and distrust in the system (11.4%) are the main reasons for not reporting.

Source: https://cgrfiles.cgr.go.cr/publico/docsweb/enpc-2020/perc-fp.html

Data from citizen interactions with government and citizens surveys could help to understand how integrity policies affect awareness for integrity in the whole of society and encourage social accountability

In addition to public servant surveys, citizen surveys are another tool that can inform policy making and be used for monitoring and evaluation purposes. Some existing studies that surveyed citizens in Costa Rica (e.g. Corruption Perception Index, Global Corruption Barometer, Latinobarómetro, Barómetro de las Américas) provide useful insights on the prevailing attitudes and opinions towards corruption. Despite the evidence that these surveys provide, which allow for international comparison, they rather do not provide detailed assessment of integrity within the country context.

Citizen surveys are a flexible tool that provide relevant information depending on how the data that they provide is used, analysed and processed. OECD countries have included three core elements in their citizen surveys and use their results for different purposes. Box 2.6 provides core elements that have been included in citizen surveys in OECD countries and how they might inform integrity policy making. A citizen survey could include questions on perception of government officials of different public institutions. It could ask citizens about the roots of their distrust in government and the attitudes and values they connect with public office. A random sample of citizens could, for example, be presented with a Semantic Differential Scale to express their associations with Costa Rica's public sector. Repeating a similar measurement on the same or a comparable sample after the implementation of the policies could be a test for an attitude changing effect.

Box 2.6. Possible elements of a citizen integrity survey

The citizen surveys are a valuable measurement tool for gathering evidence on the design, implementation and communication of integrity policies. This tool can be applied for several purposes. The following elements could be included in an integrity survey:

- **Values and attitudes**: A values and attitudes survey is particularly useful as an ex-ante diagnostic tool for awareness and behavioural change policies. To design an awareness campaign with effective appeal, a survey can be conducted to find out what integrity-related values matter to large groups of citizens.
- **Experience, awareness and perception of corruption**: Corruption is strongly embedded in social interactions. Transparency International's Global Corruption Barometer and other international surveys can provide a brief impression of how common bribery is in Costa Rica, where and when a citizen experiences bribery, and how strongly corruption is perceived by citizens in different sectors. A survey targeting only Costa Rica citizens could assess experiences, awareness and perception of corruption in more detail with respect to the country context.
- **Dilemmas and justifications**: Strengthening a culture of integrity throughout society means enabling citizens to identify and react to an integrity violation. Situations can be identified in which citizens participate in or further justify/tolerate certain types of integrity violations.

Confronting citizens with practical ethical dilemmas in survey questions could help integrity policymakers understand what integrity violations are commonly accepted by society, to whom they assign responsibility, and how citizens take this based on their general dislike of corruption.

Source: (OECD, 2019[29]).

As already mentioned, Costa Rica's National Survey on Corruption Prevention, has a module that surveys citizens regarding their knowledge about actions to prevent corruption, administrative procedures susceptible of corruption, experience of acts of corruption, culture of prevention and in general about their perception of corruption prevention in the public sector (Box 2.7).

Box 2.7. Costa Rica's National Corruption Prevention Survey 2020 Citizen Module

In February 2020, the Comptroller General of the Republic (*Contraloría General de la República*, CGR), conducted the National Corruption Prevention Survey (ENPC - 2020), to explore the opinions of citizens (questionnaire 1) and public officials (questionnaire 2) on the prevention of corruption in the public sector. The information was obtained through a telephone interview, based on sampling frames aimed at citizens and public officials.

The following results from the module applied to citizens can be highlighted:

- 85.7% of citizens consider that corruption harms them in their daily lives. In relation to this, 15.3% indicate that corruption causes insecurity, 15.2% consider that it affects their personal and the country's economy, and 11.2% believe that it causes tax increases.
- Similar to the results obtained in the previous survey, the procedures perceived with the highest level of corruption are: the application for a driver's license (71.7%), the procedure for the passage of merchandise through customs (68.0%), traffic fines (64.7%) and construction permits (62.3%). On the other hand, the procedures indicated as the most complicated or complicated are the request for a medical appointment (15.7%), request for construction permits (8.4%) and procedures at the CCSS (7.6%), which were also mentioned previously.
- Regarding the culture to prevent corruption, 64.7% indicate that citizens are the main responsible for preventing corruption, followed by the public sector (23.6%) and private companies (2.2%). In addition, it is perceived that the most relevant values when undertaking preventive actions are honesty (43.8%), honesty (8.8%) and respect (7.2%).
- In general terms, citizens perceive that 38.1% of institutions prevent acts of corruption from occurring, which is an increase compared to 2016, when 29.3% of respondents said so. Finally, 70.5% of respondents consider that Costa Rican society is very tolerant of corruption, which shows a slight drop compared to 2016, when 71.1% of respondents indicated a high tolerance of corruption.

Source: https://cgrfiles.cgr.go.cr/publico/docsweb/enpc-2020/perc-cuid.html

Citizen surveys are a thermometer to measure citizen perception towards the public sector and can indicate the level of citizen trust, identify in which areas this trust is particularly weak and where actions should be focused to improve this trust. Citizen surveys generate data that help to nurture the bilateral conversation between government and citizens. They are considered as one of the most valuables sources for the formulation of integrity policies, especially when they also measure trust levels. Trust in public institutions is the core issue of public integrity. Lack of trust compromises the willingness of citizens and businesses

to react to policies and contribute to public integrity. Moreover, integrity is one of the core five political dimensions that drive public trust (OECD, 2017[30]).

Therefore, to have comparable data over time, Costa Rica could consider including questions or modules to existing longitudinal surveys conducted by the National Institute of Statistics and Censuses. These questions could be developed based on international good practice and fine-tuned together with the rector institution of the country integrity system to fit the country context. The OECD has recently implemented the OECD Survey on the Drivers of Trust in Public Institutions (OECD Trust Survey) in 22 OECD countries, which monitors people's trust across different institutions and levels of government across countries (OECD, 2022[31]). Costa Rica was not part of this first exercise, but the country could consider implementing the survey in the future. In addition, more in depth case study on trust where conducted in Korea (OECD/KDI, 2018[32]), Finland (OECD, 2021[33]), Norway (OECD, 2022[34]) and, forthcoming, in New Zealand and Brazil.

Similar to staff surveys, Costa Rica could also produce ad-hoc citizen or targeted user surveys that serves specific purposes that go beyond the content of regularly conducted surveys. For this purpose, government agencies could collaborate with external actors such as academic research centers, for example, the Center for Research and Training in Public Administration of the University of Costa Rica.

User feed-back from public services could also be collected on a more ad hoc basis. For example, users of public services in Costs Rica could be invited to respond to short satisfaction surveys. Anonymously, respondents could indicate not only the quality of the public service provided, but also how they perceived the integrity of the institution or the public servant with whom they interacted. Especially, as integrity also covers issues related to harassment, for instance. Integrating feedback tools in situations in which citizens and public servants interact can allow policy makers to extract data related to the quality of public service and data that could help in building trust in public institutions. Feedback mechanisms provide citizens with the opportunity not only to legitimately reward a good experience, but also to flag a negative one, theoretically preventing citizens from generalising a bad experience to the entire public sector. In turn, those who respond with a positive experience could support a reconsideration of their existing attitudes towards the public sector (OECD, 2019[29]).

The increase of digital interaction between citizens and the public sector produces a diversity of opportunities to integrate questions into the online procedure that could later be used for evaluating the impact of integrity policies. The MIDEPLAN or the National Institute of Statistics and Censuses of Costa Rica could develop a standardised framework for the design and analysis of such opinion questions, with the aim of ensuring the comparability of information across different institutions. Another way of ensuring citizens' feedback to public officials is though the so-called ambient accountability mechanism: a physical element, e.g. a poster or a screen, placed directly in the public office for citizens to leave comments (Zinnbauer, 2012[35]). The installation of such ambient accountability mechanism in public offices in Costa Rica could be implemented in a randomised fashion and accompanied by an evaluation of their impact.

Proposals for action

The chapter provides recommendations to build on the ENIPC and continue working towards a comprehensive and coherent integrity system in the country. However, it is key to ensure that ENIPC's objective of developing an integrity policy is achieved, that this policy is adopted at the highest level and has clear and measurable objectives, activities and responsibilities.

To achieve grounding the ENIPC and achieve tangible results, Costa Rica could consider in particular the following recommendations:

- The MIDEPLAN could play a key role in promoting public integrity through the National Planning System, by ensuring that public integrity is included in the next National Development Plan 2022-2026.
- On integrity, the NDP 2022-2026 could prioritise: (1) to improve coherence and co-operation amongst actors of the integrity system through a co-ordination mechanism as recommended in Chapter 1, and (2) the open and participative elaboration of the National Anti-corruption Policy as prioritised by the ENIPC and its incorporation into relevant plans of the National Planning System.
- Provide guidelines for subnational levels, to implement the Ethics Management Model and to encourage the development of their own integrity policies, particularly with the aim of creating synergies through the territorial development plans.

The chapter further proposes several avenues to ensure an effective monitoring and evaluation of the ENIPC and future integrity policies. For that purpose, Costa Rica could consider, in particular, the following actions:

- Establish a central integrity monitoring system, which produces regular reports on the advances of the implementation of the ENIPC or future integrity policies and that could help to manage and communicate progress towards integrity goals.
- Costa Rica should establish clear procedures and criteria for regular and independent evaluations of integrity policies to allow for a continuous learning and improvement and leverage the data and information from the M&E system to enable more effective communication strategies.
- To monitor and evaluate integrity policies, Costa Rica should draw from different data sources and identify gaps for areas where data is not available. In particular, a set of indicators are needed to measure progress in the implementation the ENIPC. Data from surveys of public officials and citizens could provide input on how integrity policies contribute to a culture of integrity in Costa Rica´s public sector, how they promote trust in government and how they affect awareness for integrity in the whole of society.

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3 Strengthening conflict of interest management in Costa Rica

This chapter analyses Costa Rica's legal and institutional framework for managing conflict of interest. In particular, it provides recommendations related to the fragmented legal framework, the need to improve co-ordination between stakeholders and the use of a risk-based approach in reviewing and analysing asset declarations. Furthermore, the country could establish an overarching definition for conflict of interest that can be mainstreamed by way of policies, guidance and training through the entire public sector. Finally, the chapter provides recommendations to improve its system for the prevention and management of conflict of interest.

A “conflict of interest” involves a conflict between the public duty and private interests of a public official (OECD, 2004[1]). When conflict of interest situations are not properly identified and managed, they can seriously endanger the integrity of organisations and may lead to corruption in the public sector and private sector alike.

Conflicts of interest have become a major matter of public concern worldwide. Furthermore, a public sector that increasingly works closely with the business and non-profit sectors gives rise to new forms of conflict between the private interests of public officials and their public duties. When prevention mechanisms fail and a conflict of interest becomes corruption, the reputation of democratic institutions are put to the test and trust in government undermined. In the private sector too, conflicts of interest have been identified as a major cause behind corporate governance shortcomings (OECD, 2004[1]). Therefore, having a strong and consolidated framework, where management and prevention of conflict of interest situations are effective, is key to safeguarding democratic achievements.

Of key importance is the understanding and recognition that everybody has interests; interests cannot be prohibited, but rather must be properly managed. The OECD Recommendation on Public Integrity (OECD, 2017[2]) has called for countries to set high standards of conduct for public officials, in particular through:

- Setting clear and proportionate procedures to help prevent violations of public integrity standards and to manage actual or potential conflicts of interest.
- Providing easily accessible formal and informal guidance and consultation mechanisms to help public officials apply public integrity standards in their daily work as well as to manage conflict-of-interest situations.
- Averting the capture of public policies by narrow interest groups through managing conflict-of interest situations.

The legal framework for public ethics and managing conflict of interest in Costa Rica

Costa Rica could strengthen its integrity regulations as the backbone to managing conflict of interest, including the unification of the relevant legislation and standards into one cohesive and overarching regime

Managing conflict of interest is an inherent part of the wider ethics framework and is intrinsic to the integrity of government. A country’s ethics infrastructure has at its base a legal framework in which laws and regulations define the basic standards of behaviour for public servants and enforce them through systems of investigation and prosecution (OECD, 2017[3]). In all OECD member countries, conflict-of-interest policies and rules are stated in the country’s legal framework.

The descriptive and prescriptive approaches to managing conflict-of-interest situations are usually used simultaneously (OECD, 2017[3]):

- Descriptive approach: General principles set out the regulations for managing conflict-of-interest situations for public officials, while complementary specific rules provide guidance exemplifying cases.
- Prescriptive approach: Specific situations that are incompatible with the role and duties of public officials are described, and public officials are given detailed enforceable standards they should use to manage them.

Costa Rica, like many OECD countries, has established basic standards to manage and prevent conflict of interest, albeit in a fragmented manner. Law 8422 “Against Corruption and Illicit Enrichment in Public Service” (*Ley contra la corrupción y el enriquecimiento ilícito*, Articles 3, 14, 16, 18, 19 and 20) contains a

few blank prohibitions, e.g. receiving gifts, donations or conducting private activities. The Law includes subsequent disciplinary sanctions, but fails to address, altogether, the issue of conflict of interest. Furthermore, neither the Law nor its regulations contain a clear overarching definition of a conflict of interest nor standards for the hiring of private sector employees joining the public sector (pre-public employment measures). Similarly, the Civil Service Statute (Articles 39 and 40) and the Civil Service Regulation (Articles 9, 50 and 51) include provisions on prohibitions and incompatibilities. Further prohibitions and sanctions are stated in the General Law on Internal Control (Law 8292, *Ley General de Control Interno*). Guideline D-2-2004 (Regulation of Law 8422) states a list of examples of what constitutes a conflict of interest, but it is unclear how far this is used in day-to-day practice.

In Costa Rica, further laws and regulations making reference to conflict of interest situations are:

- The National Constitution (*Constitución Nacional*) Articles 109, 111, 112, 132, 143, 160 and 161)
- Law 7494 on Administrative Procurement (*Ley de Contratación Administrativa*) (Articles 22, 22bis and 24)
- Regulations of the Law on Procurement 33411 (*Reglamento a la Ley de Contratación Administrativa*) (Articles 19 and following)
- The General Law of the Public Administration, Law 6227 (*Ley General de la Administración Pública*) (Articles 230 to 238)
- Executive Decree 33146 of 2016 “Ethical Principles for Public Officials” (*Principios Éticos de los Funcionarios Públicos*)

Several issues arise from this fragmented legal framework. First, it is difficult for public officials to know what measures or legal regime applies to them. Second, as previously stated, the legal framework mainly lists prohibitions and sanctions, but officials in Costa Rica lacks guidance on what constitutes a conflict of interest.

In the legislative branch, Legislative Assembly Staff Act No. 4556 includes provisions on obligations, prohibitions and disciplinary sanctions. The Code of Ethics and Conduct of the Legislative Assembly (Standing Order No. 200, 2013) includes the obligation to avoid conflicts of interest situations for members of the personnel of the Legislative Assembly. Neither the Act nor the Code provide a definition of a conflict of interest. The only regulation in the legislative branch to provide such as definition is the Autonomous Regulation of Services of the Legislative Assembly (No. 40), which covers public servants providing services to the Legislative Assembly on a subordinate basis. In Article 38, conflict of interest is understood as “any situation or event in which the direct or indirect personal interests of associates, administrators or civil servants of an organisation or institution are in opposition to those of the entity; interfere with the duties that correspond to it, or lead them to act in their performance for reasons other than the correct and actual fulfilment of their responsibilities”.

Notwithstanding challenges in the executive branch and the legislative branch, Costa Rica’s judiciary has moved forward in establishing specific and well-defined conflict-of-interest regulations and in providing guidance. The Regulation for the “Prevention, Identification and Management of conflict of interest in the Judiciary” seeks to allow judicial operators to prevent, identify and manage possible conflicts of interest. It also provides a definition of a conflict of interest in the judicial branch and the types of private interests with the ability to generate conflicts of interest. The Regulation contains guidance on steps to formally report a possible conflict of interest (to its hierarchical superior) and recusals when handling cases related to their former private practice. More interestingly, it contains a specific set of measures and obligations directed to managers. In those, it stresses the key role of management in identifying possible conflict of interest in their offices, sending reminders to staff about the importance of reporting conflict of interest situations and the scope of the applicable obligations. It also encourages management to create open spaces and an environment of confidence so that their teams can formulate questions and reveal situations that may place them in a potential conflict of interest. Furthermore, it states that providing an appropriate solution to

situations is key to prevent a bigger negative impact on judicial management, affecting the image and credibility of the Judiciary.

Amongst other building on this successful experience in the Judiciary, Costa Rica could consider setting additional standards and regulations, which will be cover in more detail through this chapter, including regulations for pre and post-public employment situations (i.e. cooling off periods) and the proper management of conflict of interest. Similarly, Costa Rica could consider other relevant conflict-of-interest measures, beyond the purely legal reforms, such as guidance and specific sector regulations. These may include bans and restrictions for a limited period and for certain categories of public officials, interest disclosure prior to or upon entry into functions, the development of a unified ethic code, specific sectorial codes of ethics based on integrity risk management and defining general principles and values as recommended in Chapter 1. In short, Costa Rica could work towards strengthening its legal and ethical framework to be able to identify and manage conflicts of interest, whilst aiming at ensuring effective control, monitoring and evaluation, including through the system of asset disclosure forms.

Costa Rica could consider enacting specific legislation for the identification and management of conflict-of-interest situations in pre and post public employment

One of the main risks and concerns related to conflict of interest is the revolving door. Movements between the private and public sectors result in many positive outcomes, notably the transfer of knowledge and experience. However, it can also be a vehicle for undue or unfair advantage to influence government policies if not properly regulated.

Currently, Costa Rica lacks the appropriate legal provisions to regulate the interaction with the private sector in pre and post public employment situations. Besides the legal vacuum, more concerning is the fact that Costa Rica lacks a policy or procedure for detecting and timely addressing such situations. Several cases have emerged in the media recently regarding questions of impropriety in senior public officials that have opened a public debate on the need to screen candidates to senior positions with much greater care (pre-employment screening integrity checks or reference checks) (Barahona Krüger, 2020[4]). Similarly, a “cooling-off” period is lacking in the current integrity framework, which may raise questions of impropriety. This situation is no different from other OECD countries, where public officials who leave the public sector, move beyond administrative government control (Table 3.1) (OECD, 2022[5]).

Many of these measures are difficult to implement, however, as countries may risk discouraging talented individuals from accepting public sector positions. In devising its revolving door regime, a country should keep in mind that revolving door restrictions should protect governmental processes from abuse but should not be so onerous that the public sector can no longer attract the highly talented individuals needed for certain positions. This requires a balance of competing public interests (Zimmermann et al., 2020[6]). Therefore, countries should be mindful of identifying the right balance between restrictions and incentives. In particular, Costa Rica could develop a risk-based approach and appropriate oversight to ensure implementation of these measures.

Table 3.1. Provisions on cooling-off periods (post-public employment) in OECD countries

	Members of legislative bodies	Ministers and Members of Cabinet	Appointed public officials	Senior civil servants	Duration of the cooling-off period
Australia	○	●	●	●	18 months for ministers and Parliamentary Secretaries, in areas relating to any matter that they had official dealings with in their last 18 months in office. 12 months for ministerial staff, in areas relating to any matter that they had official dealings with in their last 12 months in office.
Austria	○	○	○	●	Six months under certain conditions for federal civil servants
Brazil	○	●	●	●	
Belgium	○	○	○	○	
Canada	●	●	●	●	Cooling period for **lobbying** (Lobbying Act): five years for cabinet ministers, their staff, parliamentarians and high ranked public servants. Cooling off period for **conflicts of interests** (Conflict of Interest Act and departments' Values and Ethics Code): two years for ministers and one year for public officials.
Chile	○	○	○	○	
Colombia	○	●	●	●	
Costa Rica	○	○	○	○	
Czech Republic	○	●	●	●	One year
Denmark	○	○	○	○	There are no cooling-off or other post-public employment provisions
Estonia	○	○	○	•	
Finland	○	○	○	○	There are no cooling-off or other post-public employment provisions
France	○	●	●	●	Three years for all
Germany	○	●	●	●	One year for Federal Ministers and Parliamentary State Secretaries (18 months in certain cases) Up to five years for civil servants
Greece	○	○	○	●	One year for members of government and deputy ministers and appointed officials
Hungary	○	●	●	●	Up to two years
Iceland	○	●	●	○	Six months
Ireland	○	●	●	●	One year
Israel	●	●	●	●	One year for Members of the Knesset Six months for parliamentary advisors at the Knesset
Italy	○	○	●	●	Three years
Japan	○	●	○	●	Two years for civil servants
Korea	●	●	●	●	Two years for all
Latvia	●	●	●	●	Two years
Lithuania	●	●	●	●	One year for members of legislative bodies and cabinet
Luxembourg	○	●	○	○	Two years of restrictions for ministers
Mexico	○	●	●	●	10 years for ministers, appointed officials and senior civil servants
Netherlands	○	●	○	○	Two years
New Zealand	○	○	○	○	
Norway	○	●	●	●	Six months for all
Poland	○	●	○	○	One year

	Members of legislative bodies	Ministers and Members of Cabinet	Appointed public officials	Senior civil servants	Duration of the cooling-off period
Portugal	●	●	●	●	Three years for ministers, one year for senior civil servants
Romania	○	○	○	●	One to three years for civil servants (depending on the activity)
Slovak Republic	●	●	○	○	Two years
Slovenia	●	●	○	○	One to two years for ministers or members of parliament (depending on the activity)
Spain	○	●	●	○	Two years for ministers and appointed public officials
Sweden	○	○	○	○	A body under parliament defines waiting period/restrictions if needed for Ministers and state secretaries (2018)
Switzerland	○	○	○	○	
Republic of Türkiye	○	○	○	●	Two years for senior civil servants
United Kingdom		●	○	●	Two years for Ministers* and senior civil servants
United States	●	●	●	●	One to two years
● Yes	9	26	20	24	
○ No	30	14	20	16	

Source: OECD Product Market Regulation Indicators (2018) and additional research by the OECD Secretariat.

Box 3.1. Post-employment measures in Canada and the Application Guide

In Canada, post-employment measures are included in the *Policy on People Management and the Directive on Conflict of Interest* to reinforce the integrity of the public service by preventing public servants from improperly benefiting themselves or others after they leave their positions with the government.

As a general principle, all public servants have a responsibility to minimise the possibility of real, apparent or potential conflict of interest between their responsibilities within the federal public service and their subsequent employment outside the public service. Before leaving their employment with the public service, all public servants are requested to disclose their intentions regarding any future outside employment or activities that may pose a risk of real, apparent or potential conflict of interest with their current responsibilities and discuss potential conflicts with their manager or seek guidance from their designated senior official. If a post-employment risk is determined, public servants must report the risk to their deputy head in accordance with their organisation's procedures.

Public servants may be subject to limitations if the employment outside the public service may constitute a conflict of interest with their public service duties. A "cooling-off" period of one year may be applied in order to limit contacts between the former public servant and private sector organisations with which that person had business dealings.

The online *Application Guide for Post-Employment* provides detailed information about the policy measures, the risk-based approach and the responsibilities and duties of staff and managers. Furthermore, the Guide provides direction on enforcement and sanctions and contains a number of case studies.

Source: https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/conflict-interest-post-employment/application-guide-post-employment-under-policy-conflict-interest-post-employment.html.

Regarding restrictions on private-sector employees being hired to fill a government post, practical measures such as bans and restrictions for a limited period, interest disclosure prior to or upon entry into functions, ethical guidance for upcoming officials or pre-screening integrity checks have not been implemented in Costa Rica. Such measures exist in France and the United States, for example (Box 3.2).

Box 3.2. Restrictions on private-sector employees being hired to fill a government post

France

In France, Article 432 of the Penal Code places restrictions on private-sector employees appointed to fill a post in the public administration. For a period of three years after the termination of their functions in their previous employment, they may not be entrusted with the supervision or control of a private undertaking, with concluding contracts of any kind with a private undertaking or with giving an opinion on such contracts. They are also not permitted to propose decisions on the operations of a private undertaking or to formulate opinions on such decisions. They must not receive advice from or acquire any capital in such an enterprise. Any breach of this provision is punished by two years' imprisonment and a fine of EUR 30 000.

The public service transformation Act of 6 August 2019 also tasks the High Authority for Transparency in Public Life (*Haute Autorité pour la transparence de la vie publique*, HATVP) with a "prenomination" control for certain high-ranking positions. A preventive control is carried out before an appointment to one of the following positions, if an individual has held positions in the private sector in the three years prior to the appointment:

- Director of a central administration and head of a public entity whose appointment is subject to a decree by the Council of Ministers.
- Director-general of services of regions, departments or municipalities of more than 40 000 inhabitants and public establishments of inter-municipal co-operation with their own tax system with more than 40 000 inhabitants.
- Director of a public hospital with a budget of more than EUR 200 million.
- Member of a ministerial cabinet.
- Collaborator of the President of the Republic.

United States

Once they have taken office, former private-sector employees and lobbyists are subject to a one-year cooling-off period in situations where their former employer is a party or represents a party in a particular government matter. This restriction applies not only to former private-sector employees and lobbyists, but also to any executive branch employee who has, in the past year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee of an individual, organisation or other entity.

In the case of an employee who has received an extraordinary payment exceeding USD 10 000 from their former employer before entering government service, the employee is subject to a two-year cooling-off period with respect to that employer.

Source: (OECD, 2021[7]).

Considering the existing legal void to address conflict-of-interest situations in pre and post public employment and the lack of other available management tools, Costa Rica could consider the following actions:

- Strengthen pre and post-public employment restrictions in legislation by establishing the scope of officials and activities covered and the length of the cooling-off period, considering a risk-based approach and an appropriate balance between restrictions and incentives for future public sector officials (e.g. bans on lobbying may be appropriate for a specific period of time (Chapter 4), while restrictions related to certain insider information could be applied until the sensitive information becomes public).
- Allow for provisions on pre and post-public employment to advisors and senior civil servants, as well as public officials who have regular contact with the private sector, including officials working in public procurement, regulatory policy, inspections, tax and customs.
- Complement legislation with criteria and guidance for situations where a senior public official moves from or to a sector covered by their portfolio or where they had previous influence over government decisions. This will also help address risks related to undue lobbying or misuse of insider information.
- Establish rules regarding exemptions to the restrictions, including by determining who decides on the application of post-public employment restrictions and the criteria used to inform decisions on exemptions. Particularly, the MIDEPLAN, PEP and CGR could address the issue of pre and post public employment in their guidelines and regulations by establishing co-ordinated standards for incoming and outgoing public officials.
- To allow for more clarity for companies hiring of former public officials covered by post-employment regulations, the MIDEPLAN could consider compiling a list of public officials subject to the cooling-off periods regulations, as well as establishing a channel for private sector consultations on the matter.

Costa Rica should reinforce administrative and disciplinary sanctions in their legislation to cover situations when flagrant violations of conflict of interest arise

In Costa Rica, criminal and disciplinary sanctions for the materialisation of a conflict of interest are limited to general previsions, in accordance with LCCEI (Art. 38 and 39). Currently, there are no specific sanctions for wilful violations of the conflict-of-interest regime and there is no legal standard to determine whether the conflict-of-interest situation is the product of mismanagement or a *dolus* act. The situation becomes more confusing when public officials are accepting or holding prohibited assets (e.g. gifts or outside employments) and may face both criminal and administrative (disciplinary) sanctions, because the law currently does not envisage such situations.

Additionally, statistical information on the number of public officials sanctioned for existing conflict-of-interest regulations within the disciplinary regime is not available. As emphasised in Chapter 5, this may be the consequence of disciplinary sanctions currently not being under the responsibility of a single centralised body, but the competence of the respective public entity in which the violation took place. Regardless, information regarding such breaches is neither specifically recorded nor centralised.

Therefore, Costa Rica could move towards by:

- Establishing legislation to reinforce specific disciplinary sanctions for violations of conflict-of-interest regulations and considering wilful acts as opposed to slight negligence or mismanagement. This may be reinforced by the inclusion of conflict-of-interest standards in ethics codes as well as the development of internal regulations in public institutions to address specific sectorial situations.
- Clarifying, by means of legislation, the situations when both criminal and administrative sanctions apply.
- Keeping statistical information on the number of public officials with disciplinary sanctions for violations of conflict-of-interest regulations.

The institutional framework for public ethics: a pillar for managing conflict of interest

Leveraging on its ethical management model and the experience of the judiciary, Costa Rica could develop a single policy framework for promoting integrity and managing conflict of interest

The Management Capacity Index (*Índice de Capacidad de Gestión*, ICG; see Box 2.3 in Chapter 2) of the CGR, implemented for the first time in 2021, shows that there are still challenges when it comes to the prevention and management of conflict of interest in Costa Rica. Indeed, 31.5% of public sector institutions are not providing training nor guidance on the issue (CGR, 2019[8]; CGR, 2021[9]).

Two bodies play a key role in framing conflict-of-interest policies at the central level, the PEP and the CGR. The PEP is responsible for the tasks specified under Art. 3(h) of the Organic Law of the Attorney General's Office (*Ley Orgánica de la Procuraduría General de la República*), including the prevention of corruption and promotion of public ethics. As such, the PEP takes administrative complaints regarding conflict of interest and provides trainings and guidance to public officials (OECD, 2017[10]). In turn, the CGR handles administrative complaints and solves legal enquiries with respect to the scope of the obligations of public officials only in administrative procurement procedures. Similarly, by way of Law 10159 of 2022, the MIDEPLAN has been assigned the role of overseer of the public employment system of Costa Rica (Chapter 1 and 5). This law assigns a special role to the MIDEPLAN in the prevention and management of conflict of interest at a strategic level, including by assigning it the co-ordination with HR Offices and the PEP on ethics and integrity.

As it is the case with the legal provisions, a lack of clarity also exists in the responsibilities and actors for the proper management and prevention of conflict of interest. This can result in either fragmentation and/or uneven action. Combined, the legal and institutional fragmentation, along with the lack of a clear definition on conflict of interest, makes implementation and compliance challenging.

A single policy framework, covering the different branches of power and addressing public ethics could serve several purposes, including improving co-ordination, strengthening the ethics infrastructure of the country and providing clarity to public officials and the private sector. Box 3.3 provides some examples.

Box 3.3. Definitions of conflict of interest in France, Poland, Portugal and Slovenia

In its 2003 Guidelines for Managing Conflict of Interest in the Public Service, the OECD proposes to define a conflict of interest as a "conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests, which could improperly influence the performance of their official duties and responsibilities" (OECD, 2004[1]).

In **France**, the law of 11 October 2013 on transparency in public life defined the notion of conflict of interest as "a situation in which a private or public interest interferes with a public interest in such a way that it influences or appears to influence the independent, impartial and objective performance of a duty". Taking into account the fact that the concepts of "conflict of interest" and illegal taking of interest can be difficult to assess, the High Authority for transparency in public life published two comprehensive guides on conflicts of interests for public organisations and public officials. The guides present the High Authority's doctrine on the risks of conflict of interest, particularly between public interests, and offers a summary of the ethical procedures that mark the career of a public official or civil servant.

The Code of Administration Procedure in **Poland** covers both forms of conflicts; a situation of actual conflict of interest arises when an administrative employee has a family or personal relationship with an applicant. A perceived conflict exists where doubts concerning the objectivity of the employee exist.

Portugal has a brief and explanatory definition of conflict of interest in the law. A conflict of interest is defined as an opposition stemming from the discharge of duties where public and personal interests converge, involving financial or patrimonial interests of a direct or indirect nature.

In **Slovenia**, the Integrity and Prevention of Corruption Act of 2010 defines conflicts of interests as circumstances in which the private interest of an official person (a pecuniary or non-pecuniary benefit which is either to his advantage or to the advantage of his family members or other natural or legal persons with whom he maintains or has maintained personal, business or political relations) influences or appears to influence the impar1al and objec1ve performance of his public duties;

Source: OECD (2004[1]), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, additional research by the OECD Secretariat; HATVP, Guide déontologique, Contrôle et prévention des conflits d'intérêts, https://www.hatvp.fr/wordpress/wp-content/uploads/2021/02/HATVP_GuideDeontologie_2021_A-Imprimer.pdf

At the same time, the interviews conducted for this review have highlighted that the term conflict of interest has a strong negative connotation in Costa Rica, despite the fact that a conflict of interest is not necessarily corruption. On the contrary, conflicts between private interests and public duties of public officials must be correctly identified, appropriately managed and effectively resolved in order to avoid corrupt practices to thrive (OECD, 2005[11]). In light of all the above, any definition of conflict of interest within the single policy framework should emphasise this approach.

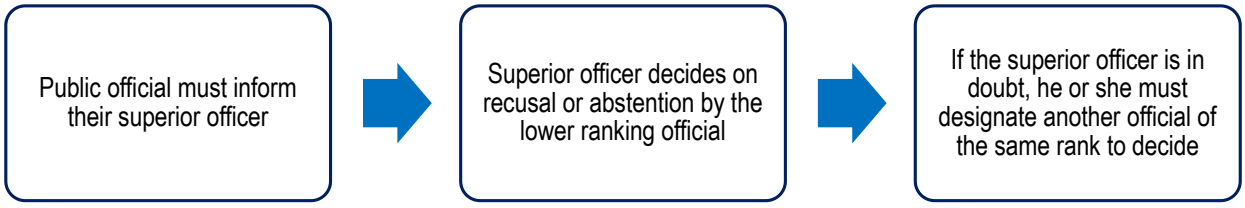
Therefore, ideally in the process of developing the National Anti-corruption (Integrity) Policy that grounds Costa Rica's National Strategy for Integrity and Prevention of Corruption (*Estrategia Nacional de Integridad y Prevención de la Corrupción*, ENIPC), Costa Rica could establish an all-encompassing definition of conflict of interest properly aligned with its legal framework and consider different types of existing conflict-of-interest situations (actual, potential and perceived). Moreover, based on the all-encompassing definition, the policy could seek to strengthen the MIDEPLAN and PEP's role of providing general guidelines and advice on managing conflict of interest, in co-ordination with the HR offices in each institution. Furthermore, as stated in Chapter 1, Costa Rica could further build on some successful experiences in mainstreaming integrity policies into public organisations, in particular by including more explicitly conflict-of-interest management in its ethics management model (*Modelo de Gestión Ética*, MGE).

Preventing and managing conflict of interest should be mainstreamed across the public sector by MIDEPLAN, in close co-ordination with the PEP, Human Resources Offices, the Institutional Commissions on Ethics and Values (CIEV) and the CNEV

Preventing and managing conflicts of interest is a central feature of standards on public integrity. When conflict of interest situations are not identified and managed, they can seriously endanger the integrity of organisations. Preventing and managing conflicts of interest helps level the playing field and ensure stakeholders' fair and adequate access to policy makers and policy-making processes (OECD, 2005[11]).

Costa Rica could move towards establishing an all-embracing system for the proper management of conflict of interest that builds on a previously established definition as recommended above whilst providing practical tools for the identification and management of particular situations. Indeed, as is the case with the regulatory framework, Costa Rica does not have a system or institutional infrastructure to manage conflict of interest situations. Furthermore, the fragmented regulatory framework on public ethics and conflict of interest in Costa Rica is mirrored in a lack of clarity with respect to the public agencies responsible for managing conflict of interest in the public sector. The General Law of Public Administration Art. 230, states that public officials must inform their superiors about possible contraventions to the law, so that they can assess the situations and act on it (e.g. remove the official from a specific matter). According to Costa Rican authorities, this procedure (abstention or recusal in administrative procedures) is a rule of general applicability. Art. 231 states that the official in charge will have to motivate its decision within three (3) days of the initial consultation (Figure 3.1).

Figure 3.1. Current process to report and assess conflict of interest situations in Costa Rica



This process entails several problems in Costa Rica. First, the only instance for reporting a conflict of interest seems to be the immediate superior. In the interviews conducted for this review it became clear that this line of reporting, although valid by OECD standards (OECD, 2017[2]), could create additional problems in the Costa Rican context. First, a perception remains of a co-relation between conflict of interest and corruption. In this sense, many public officials may seem less inclined to disclose a conflict of interest, whether it is real, perceived or potential, as they may fear being seen as "corrupt". Second, a hierarchical relationship may sometimes be permeated by distrust, tensions and wariness. This in turn, may create a situation of fear for a public official who faces a conflict of interest situation. Third, neither public officials nor their superiors receive regular training to guide their decisions. To alleviate these challenges, Costa Rica could consider including as an option reporting to HR offices or to the Institutional Commissions on Ethics and Values (*Comisiones Institucionales de Ética y Valores*, CIEV). Costa Rica could also consider targeted training on conflict of interest, how to disclose such situations, to whom and when.

Similarly, there is no compilation of case law or practical guidance establishing the standard of its application in the past, thus allowing each manager to make decisions based on its own criteria. As informed during the virtual fact-finding mission, this lack of guidance to both public officials seeking advice and the superior taking a decision is quite concerning to Costa Rican authorities. In sum, beyond basic considerations, no indication is given to public officials on considerations to be taken into account when deciding if the person must abstain or recuse. To address this issue, Costa Rica could consider providing public officials in the executive branch with practical examples of concrete steps to be taken for identifying

and managing conflict-of-interest situations. In addition, clear guidelines could be provided on how public managers should exercise judgment in individual cases to determine the most appropriate solution to manage the actual conflict-of-interest situation.

Additionally, Costa Rica has taken some, albeit not successful, steps to consider addressing the issue of institutional co-ordination. First, it has been considering a legislative reform to address not only legal loopholes, but also institutional weaknesses. In particular, the role of HR offices are being considered as an alternative for providing advice, guidance and training in the management of conflict of interest through the public service. Unfortunately, similar steps had been taken in 2012, with the Institutional Operational Plan of the General Directorate of Civil Service (DGSC), without success (OAS, 2013[12]). This ambitious agenda demonstrates both the commitment of the Government of Costa Rica with multiple stakeholders involved (CIEV, CNEV, DGSC, PEP and the CGR) and multiple dimensions (legislative process, institutional design, training, etc.).

Considering this, Costa Rica could consider the following actions to improve its conflict-of-interest management system:

- Consider amending the procedure to report conflict-of-interest situations, to allow HR offices and/or the CIEV be considered as alternatives for reporting and providing advice on conflict of interest situations. This may include the report of concrete and more general circumstances that may lead to a potential conflict of interest.
- The MIDEPLAN, alongside the PEP, could consider moving forward on the design of a framework or policy guidelines for identifying and managing of conflicts of interest to be mainstreamed through the entire public administration. This would provide consistency on the advice and guidance provided to senior managers and HR Offices.
- Similarly, the PEP and CGR could consider enacting a set of guidelines for public officials to manage different kinds of conflict-of-interest situation that go beyond “prohibitions” and “incompatibilities” and provide practical examples on how to resolve a specific conflict.
- The PEP could consider an increased coordination with CNEV to promote awareness raising on conflict of interest. In particular, the CNEV may contribute to changing the negative connotation attributed to conflict of interest as an equal of corruption.
- The MIDEPLAN, with the help of the PEP, could consider developing other mechanisms to identify or detect emerging conflict-of-interest situations, including using the new “Integrated Public Employment Platform” to annually register conflicting interests or activities. The operation of the system could be located in HR offices. Furthermore, Costa Rica could consider making use of Law 10159 (appointment and dismissal policies) and include this declaration as a pre-requisite before the appointment of certain categories of public officials using a risk-based approach.

Provide training to public officials on regulations and expectations to ensure a realistic, contextually appropriate and proportional response to each case

Legal provisions and policies remain words on paper if they are not adequately communicated and inculcated. Socialisation mechanisms are the processes by which public servants learn and adopt ethical norms, standards of conduct and public service values (OECD, 2018[13]). In Costa Rica, no orientation is given to public officials on the appropriate behaviour for management of conflict-of-interest situations. The PEP does provide some training on public ethics, however. In these sessions, the PEP mainly answers questions from participants. In other instances, the PEP organises events with public officials as a way to engage peers in thematic discussions. Costa Rican authorities’ states that staffing limitations is the main obstacle to engage in a more fruitful discussion with public officials.

At any rate, the role of the CGR in providing guidance to public officials has been fundamental, but could be further improved. The Guidance D-2-2004-CO contains ethical principles and examples of what may

constitute a conflict of interest, but focuses on specific “prohibitions” and “incompatibilities”, rather than ethical principles or conflict-of-interest situations that do not entail a prohibition. In 2015, the PEP designed a training course on “conflicts of interest of a public nature” and included it in its training programmes that can be delivered on demand. The PEP can also provide ad-hoc guidance on issues related to the management of conflicts of interests. Furthermore, according to Costa Rican authorities, in case of doubts, public officials can report the issues to the legal office of the institution in order to get a non-binding opinion (OECD, 2017[10]).

To institutionalise integrity standards and duly integrate them as part of the organisational culture, a number of communication, awareness raising and guidance instruments can be used. Well-designed guidance and training equip public officials with the knowledge and skills to manage integrity issues appropriately (OECD, 2022[14]). Given the lack of regular training for both public officials and senior management (currently tasked with advising on conflict-of-interest regulations), Costa Rica should consider the following actions:

- Considering the provisions set up in Law 10159, Art.7, the MIDEPLAN, in co-ordination with PEP, could conduct regular training activities for managers with the role of providing advice on conflict-of-interest situations and on the current legal framework and prohibitions. In particular, the training should cover practical examples and promote decision-making processes. Furthermore, the training should be co-ordinated, when necessary, with relevant stakeholders (e.g. the Training and Development Center (*Centro de Capacitación y Desarrollo* - CECADES), the Judicial School or the Training Center of the CGR).
- The CNEV could provide public officials with clear and up-to-date information about the organisation’s policies, rules and administrative procedures relevant to maintaining high standards of public integrity, including in conflict-of-interest situations. Furthermore, the CIEVs could help mainstream these guidelines through the entire public administration.
- The CIEVs, with the support and guidance of CNEV, the PEP and HR Offices, may offer induction and on-the-job integrity training to public officials in order to raise awareness and develop essential skills for the analysis of ethical dilemmas, and to make public integrity standards applicable and meaningful in their own personal contexts.
- The CNEV, with the help of HR offices, could provide informal guidance and consultation mechanisms to help public officials apply public integrity standards in their daily work as well as to manage conflict-of-interest situations.
- The MIDEPLAN, with the support of the PEP, could set up virtual training alternatives to improve the coverage and frequency of training for public officials, in particular with the aim of reaching municipalities.
- Based on risk assessments carried out by public institutions, the PEP could elaborate a national mapping of conflict-of-interest risks by sectors and conduct activities to raise awareness of these with relevant public officials. This risk mapping should be available for civil society organisations as well as the private sector.

Costa Rica could strengthen the institutional capacity to process, verify and audit asset declarations whilst making it a useful tool to identify and guide a public official on possible conflicts of interest

An effective financial and interest disclosure system can play a significant role in promoting integrity, transparency and accountability (OECD, 2015[15]). Depending on their design, disclosure forms can serve to detect illicit enrichment or to determine whether a public official’s decision has been compromised by a private interest, such as former or outside employment, board membership or similar.

In Costa Rica, Law 8422 and its regulation contain the general rules for asset declarations. Art. 22 states the three types of declarations that must be filled: initial, annually and upon departure. In particular, the law requires all political and senior level officials to submit an asset declaration within 30 days of taking office and following that, on an annual basis. The final declaration must be presented 30 days after leaving public office. Furthermore, for the Comptroller General and the Deputy Comptroller General, a copy of their declarations must be send to the Legislative Assembly.

The information to be declared is comprehensive. Art. 29 states that assets, income, participation in companies, bonds and other 20 categories must be reported. Assets must be reported when hold in Costa Rica or abroad. Unfortunately, there is no obligation to report about previous employment, a requirement that could prove useful to identify and guide a public official on possible pre-employment conflicts of interest.

The review of asset declarations by the CGR consist of two phases. A first phase crosses databases to review false statements and contrast the declarations against other registries. A second phase reviews increases of income (salaries and assets). According to Costa Rican authorities, the CGR will soon start a third phase consisting of triangulation between tax information and other omitted information. However, according to the interviews conducted, the administrative capacity to check and verify the completeness of asset declarations is low and insufficient to process all declarations in a timely manner. Furthermore, other institutions (FAPTA and PEP) consider that more should be done to improve the way the CGR shares information with them, both in terms of process and of a timely response. Similarly, according to Costa Rican authorities, there have been no reported cases in which illicit enrichment has been detected through asset declarations.

As most OECD countries, Costa Rica applies a risk-based approach. The scope of the Costa Rican financial and interest disclosure system applies to all three branches, including state-owned enterprises, armed services, judges and police. It has a risk-based approach as far as it does not require all public officials to declare their assets, but only obliges those that face a higher risk of corruption due to their position. Furthermore, Costa Rica has clearly defined the list of persons required to provide an asset declaration, based on risk criteria and decision-making capacity (e.g. officials working in public procurement or managing public funds). Costa Rica also has a comprehensive system to identify the natural persons occupying these positions. Art. 28 states that the director, head or person in charge of the human resources unit or the personnel office of each public body or entity, must inform to the CGR, within 8 business days of the appointment, the name, qualifications and exact address of the public official.

Finally, information of the declarations is confidential (Art. 24) and only accessible to the CGR or in special cases to the special investigation commissions of the Legislative Assembly, the Public Ministry and Courts. However, asset declaration systems could benefit from some kind of social control. Furthermore, legal sanctions are not a necessarily an element of all declarations systems. Indeed, if public disclosure is ensured, active media and civil society and their reactions can be sufficiently disciplining factors (OECD, 2011[16]). Furthermore, there are strong reasons for disclosing, at least partially, data of political officials who should be prepared to provide explanations regarding the disclosed information. While there is a global trend towards greater disclosure, Costa Rica could benefit from considering some degree of disclosure of asset declarations of high-level and elected officials, while striking the right balance between public disclosure and protection of privacy and could therefore amend Art. 24 of law 8422 to allow the publication of assets declarations of certain categories of public officials.

In sum, Costa Rica should consider the following actions:

- Analyse the administrative needs and capacities of the CGR to check and verify the completeness of asset declarations and provide the CGR with enough resources to comply with this obligation.
- Costa Rica could consider modifying the confidentiality obligation of Law 8422 to allow the sharing of assets declarations. Furthermore, the CGR should engage more frequently with other institutions (FAPTA and PEP) on assets declaration information relevant for criminal or administrative cases.

- The CGR could strengthen its investigation capacity on asset declarations disparities, by increasing the cross reference of information with other datasets (such as tax declaration) with the aim of making asset declarations a useful tool for the identification of illicit enrichment.
- Costa Rica should amend Law 8422 to allow the public disclosure of asset declarations based on a careful weighing of various considerations, such as domestic traditions, perceptions of corruption and others.

Proposals for action

The recommendations provided in this chapter are an input on how Costa Rica could improve its conflict-of-interest system. As such, these proposals may inform on-going legal and institutional reforms and help address the current fragmentation of its legal and institutional system.

First, Costa Rica should consider taking steps to strengthen its conflict-of-interest legislation and standards by:

- Strengthening its laws and regulations and providing a clear overarching definition of conflict of interest.
- Strengthening pre and post-public employment restrictions in legislation by establishing the scope of officials and activities covered and the length of the cooling-off period, considering a risk-based approach and an appropriate balance between restrictions and incentives for future public sector officials.
- Complement legislation with criteria and guidance for situations where a senior public official moves from or to a sector covered by their portfolio or where they had previous influence over government decisions.
- Establish rules regarding exemptions to the restrictions, including by determining who decides on the application of post-public employment restrictions and the criteria used to inform decisions on exemptions.
- Compiling a list of public officials subject to the cooling-off period's regulations, as well as establishing a channel for private sector consultations on the matter.
- Establishing legislation to reinforce specific disciplinary sanctions for violations of conflict-of-interest regulations and consider wilful acts as opposed to slight negligence or mismanagement.

Second, while the PEP has been a vital stakeholder in providing support and guidance on conflict of interest, the country should consider ways to ensure an effective and coherent system for the proper management and prevention of conflict of interest. This could be achieved by:

- Providing a single policy framework, covering the different branches of power and leveraging the public ethics framework.
- Move towards establishing an all-embracing system for the proper management of conflict of interest that builds on a previously established definition whilst providing practical tools for the identification and management of particular situations.
- Consider amending the procedure to report conflict-of-interest situations, allowing HR offices to be considered as an alternative for reporting and providing advice on conflict of interest. This may include the report of concrete and more general circumstances that may lead to a potential conflict of interest.
- Consider enacting a set of guidelines for public officials to manage different kinds of conflict-of-interest situations that go beyond "prohibitions" and "incompatibilities" and provide practical examples on how to resolve a specific conflict.
- Consider using the new "Integrated Public Employment Platform" to annually register conflicting interests or activities.

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4 Strengthening transparency and integrity in decision-making in Costa Rica

This chapter looks at Costa Rica's existing framework to ensure integrity and transparency in public decision-making processes and assesses its resilience to the risks of capture of public policies and undue influence by special interest groups. In particular, this chapter identifies measures Costa Rica could adopt to strengthen access to information for all stakeholders, as well as stakeholder engagement in policy making. This chapter also explores how to strengthen the legislative framework with respect to lobbying and political finance and identifies measures to raise awareness about integrity standards on lobbying for government officials and lobbyists more broadly.

Introduction

Public policies determine to a large extent the prosperity and well-being of citizens and societies. They are also the main 'product' people receive, observe, and evaluate from their governments. While these policies should reflect the public interest, governments also need to acknowledge the existence of diverse interest groups, and consider the costs and benefits for these groups. In practice, a variety of private interests aim at influencing public policies in their favour through lobbying and other influence practices. It is this variety of interests that allows policy makers to learn about options and trade-offs, and ultimately decide on the best course of action on any given policy issue. Such an inclusive policy-making process leads to more informed and ultimately better policies.

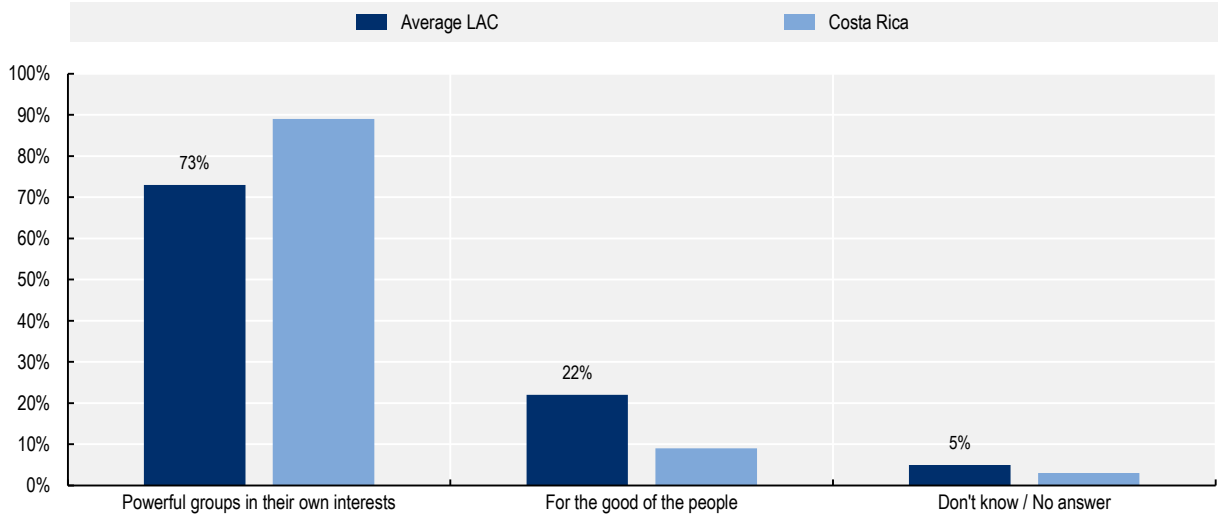
Lobbying itself is a legitimate act of democratic participation because it enables different groups to provide input and expertise to the policymaking process. However, it has a profound impact on the outcome of public policies. If non-transparent, lobbying poses a risk to inclusiveness in decision-making and can result in suboptimal policies. Indeed, experience shows that policy making is not always inclusive and at times may only consider the interests of a few, usually those that are more financially and politically powerful. Experience also shows that lobbying and other practices to influence governments may be abused through the provision of biased or deceitful evidence or data and the manipulation of public opinion (OECD, 2021[1]). For example, when the financing of political parties or election campaigns takes advantage of legal loopholes, or social media is used to manipulate public opinion and shield influence from public scrutiny, public policies may not provide an optimal outcome for our societies. Evidence further shows that there is a risk that some parties and candidates, once in office, will be more responsive to the interests of a particular group of donors rather than to the wider public interest. Donors may expect a form of reciprocity for donations made during an election campaign, for example getting privileged access to information or to overpriced public contracts, receiving favourable conditions in public loans or other forms of illegal benefits from the respective public administration (OECD, 2017[2]).

The consequences on the economy are widespread. Studies increasingly show that situations of undue influence and inequity in influence power has led to the misallocation of public resources, reduced productivity and perpetuated social inequalities (OECD, 2017[2]). They may negatively affect the appetite of (foreign) investors and lower the country's trustworthiness at the international level.

Public policies that are misinformed and respond only to the needs of a specific interest group can also negatively affect trust to the government, possibly resulting in the dissatisfaction of the public as a whole towards public institutions and democratic processes. According to the 2020 Latinobarómetro survey, 88.5% of citizens in Costa Rica think that their country is governed for a few powerful groups in their own interest; while only 8.6% believe Costa Rica is governed for the good of all people (Figure 4.1). This is the second highest percentage in the Latin American region and above the average of all Latin American countries (73%) covered by the survey. The score indicates that citizens perceive that policies are undue influenced by narrow interests, and/or that powerful groups exert too much influence on the outcomes of public decision-making processes. In addition, when asked who they think has most power in Costa Rica, 23.4% of respondents put big companies first, while 29.4% put Government and 12.6% Congress (La Corporación Latinobarómetro, 2021[3]).

Figure 4.1. Citizens in Costa Rica perceive that a few powerful groups govern their country

Respondents were asked the following question: "Generally speaking, would you say that your country is governed for a few powerful groups in their own interest? Or is it governed for the good of all?"



Note: This survey has been conducted in 18 countries in the region (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Peru, Dominican Republican, Uruguay, and Venezuela).
Source: Latinobarómetro (2021), https://www.latinobarometro.org/latOnline.jsp.

To maximise the benefits of inputs into decision-making, overcome the concentration of economic resources in the hands of the few and to safeguard the transparency and integrity of democratic processes, Costa Rica should therefore aim at improving its decision-making processes. This could be achieved by fostering transparency and integrity in lobbying and influence activities, restricting undue influence of government policies and increasing equity in stakeholder participation. It requires building or strengthening a coherent, comprehensive, effective and enforceable regulatory framework, consistent with the other policies and regulations and ensuring proper implementation, compliance and review.

In addition to strengthening public integrity as emphasised throughout the previous chapters, Costa Rica should therefore reinforce its policies in both the executive and legislative branches, along the following main lines:

- Strengthening transparency in government decision-making processes, in particular lobbying and political finance.
- Establishing transparency and integrity frameworks for all bodies providing advice to government.
- Establishing an integrity framework adapted to the risks of lobbying and influence activities for both public officials and non-governmental actors.
- Ensuring that government decision-making processes are inclusive through effective stakeholder engagement.

Strengthening transparency in government decision-making processes in the executive and legislative branches

Costa Rica could consider consolidating the framework for access to information into a single Act

Access to information (ATI) is a necessary precondition for democracy and a necessary legal foundation for transparency and accountability in policy-making (OECD, 2014[4]; OECD, 2016[5]). ATI is understood as the ability for an individual to seek, receive, impart and use information effectively. It enables citizens and stakeholders to obtain information on the decisions that affect their everyday lives, and fulfil their role as watchdogs over the proper functioning of government institutions. For these reasons, effectively implementing citizens' right to know and the legal provisions to access information are significant instruments for combating corruption and undue influence in public decision-making.

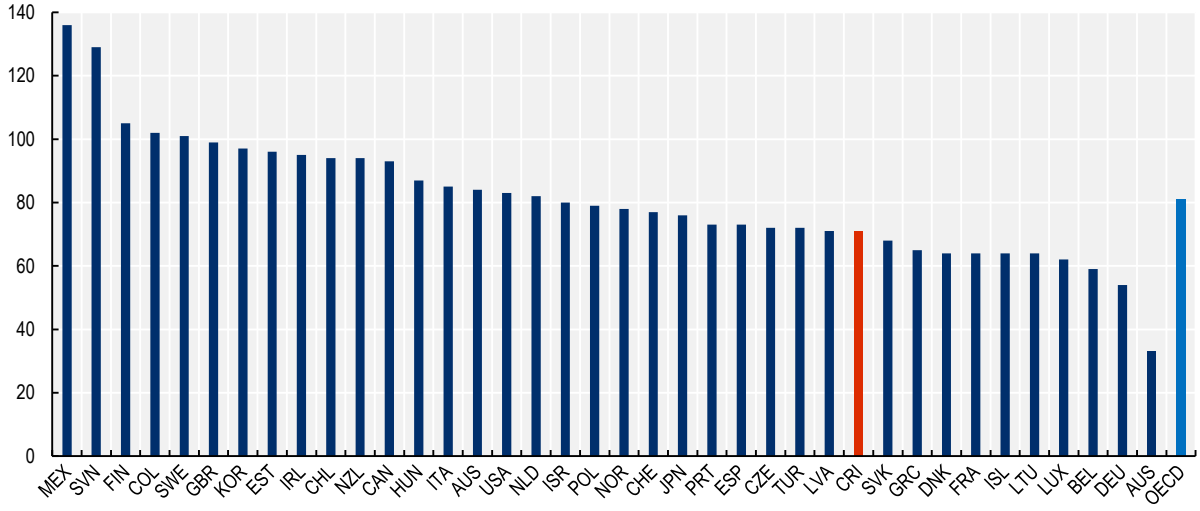
An effective legal framework that clarifies how right to information will be realised is the foundation for a strong access to information system. Core provisions of ATI laws include: the scope, the provisions for proactive and reactive disclosure, the exemptions and denials to grant information to the public, the possibility to file appeals, and the institutional responsibilities for oversight and implementation.

In Costa Rica, the Constitution protects the right to information on matters of public interest. The Constitution also provides the basis for the disclosure of information. Article 30 states that “free access to administrative departments is guaranteed for the purpose of obtaining information on matters of public interest.” Moreover, in November 2015, the President of the Republic, the Presidents of the legislative, the judiciary and of the Supreme Electoral Tribunal (*Tribunal Supremo de Elecciones*) signed a Declaration for the Establishment of an Open State *(Declaración por la Construcción de un Estado Abierto*). They committed to “promote a policy of openness, transparency, accountability, participation and innovation in favour of the citizens” across the entire state apparatus. Furthermore, Costa Rica has designed an integrated National Open State Strategy (*Convenio marco para promover un Estado Abierto de la República de Costa Rica*) developed by the different branches of power together with civil society, which was launched in March 2017. Recently, with the Executive Decree 43525-MP-H-MICITT-MIDEPLAN-MJP-MC of April 2022, Costa Rica continued to promote open government in the public administration and created the National Commission for an Open State.

In 2017, Executive Decree 40200 on Transparency and Access to Information was adopted to regulate access to public information, the procedure for submitting requests, the designation of access to information officers in public institutions and their functions, the publication of information, the sanctions regime and the reporting of the situation on access to information within the institutional annual reports. The Decree entrusts the National Commission for Open Government with monitoring compliance. However, according to the Right to Information Rating (RTI), the legal quality of Costa Rica’s Decree is lower than the OECD average of 81 (Figure 4.2).

Figure 4.2. In terms of its legal framework, Costa Rica's Access to Information Act is below of the OECD average

Right to Information Rating 2020

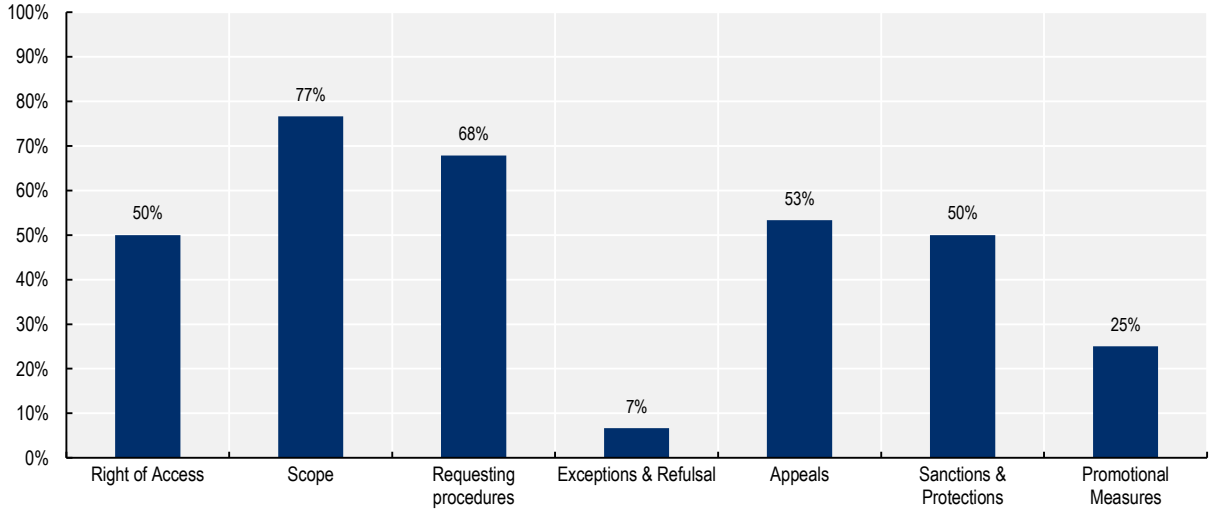


Note: The maximum achievable composite score is 150 and reflects a strong RTI legal framework. The global rating of RTI laws is composed of 61 indicators measuring seven dimensions: Right of access; Scope; Requesting procedures; Exceptions and refusals; Appeals; Sanctions and protection; and Promotional measures.
Source: Access Info Europe (AIE) and the Centre for Law and Democracy (CLD), Right to Information Rating, https://www.rti-rating.org/

In terms of scope, the current legal framework applies to the executive branch, including local levels of government, but the legislative and judicial branches are not explicitly included. The framework also covers private entities managing public funds, state-owned enterprises and other entities performing public functions, as well as some autonomous and semi-autonomous bodies. In terms of disclosures, the Decree (Article 17) lists public information that is accessible. However, it does not provide clear procedures or guidance on the format requested by applicants for access to information.

Concerning exceptions and refusals, international good practice suggests that all exceptions should be clear, probable and with a specific risk of damage to public interest, or legally protected by a personal interest. Public interest tests and harm tests are two common ways to exempt information to ensure that these are proportionate and necessary. In Costa Rica, there are exceptions specified in Decree 40600. The Constitution, as interpreted by the Courts, provides for exceptions regarding state secrets. In addition, the Constitutional Court has recognised additional exceptions, such as for public order and public morality, based on general grounds for restricting fundamental rights in the Constitution. It has also found other exceptions to be valid based on other laws or rights, such as exceptions for privacy and commercial secrets. It has also recognised a general category where information may be withheld if it is generally not in the public interest to disclose it. According to the Right to Information Rating, the jurisprudence is not enough to create an exceptions regime, because it does not clearly establish a closed/limited set of exceptions and authorities would have significant discretion to interpret in practice (Figure 4.3). In addition, Courts do not seem to apply a harm test when interpreting exceptions (Access Info Europe, Centre for Law and Democracy, n.d.[6]).

Figure 4.3. Costa Rica's Access to Information legal framework exhibits weaknesses in the dimensions of exceptions and refusals



Note: The percentages are calculated based on the maximum possible scores by dimension and the actual RTI score obtained by Argentina.
Source: Access Info Europe (AIE) and the Centre for Law and Democracy (CLD), Right to Information Rating.

In addition to a solid legal framework, effective institutional arrangements are also essential to implement the right to information. These arrangements concern several aspects, including where and how information is published, to whom requests can be made and timeliness of responses. In Costa Rica, institutions appoint an Information Access Official responsible for receiving, managing and responding to inquiries within ten working days, in accordance with the General Public Administration Law. Costa Rica also appointed a National Commission on Open Data, which provides a third mechanism for data requests. Yet, a 2019 report from the civil society organisation *Costa Rica Íntegra*, in partnership with the School of Public Administration, found that barriers and obstacles persist to access public information in the vast majority of the 112 institutions studied. In particular, a third of the Access to Information Officers had not yet been appointed and only one public entity fully complied with its obligations of active transparency. The report also pointed out a lack of training for public officials and citizens on the provisions of the Decree 40200 (Costa Rica Integra, 2020[7]). Lastly, the Decree does not provide for an oversight body in charge of enforcement, monitoring and promotion of the law.

In light of the above, the current system for access to information in Costa Rica remains incomplete without a stand-alone access to/freedom of information (ATI) law. More than 100 countries worldwide, including all OECD countries have a stand-alone access to/freedom of information law (OECD, 2016[8]). Despite different attempts to pass an access to information law, Costa Rica had no such law in force at the time of writing. For instance, in June 2014, a draft law had been presented to the Legislative Assembly but was rejected by Members of Congress. A new Legislative Decree 10 242 *"General Law of Access to Public Information and Transparency"* was later adopted in the legislative Assembly, but it was partially vetoed by the Government in June 2022 and had to be archived later. The now-rejected initiative proposed to reduce to 5 business days the deadline for citizens to receive public information requested from state entities or private entities that handle or guard public funds (compared to the current term of 10 business days). In the case of requests made by the press, the institutions had to respond within 48 hours. In addition, the proposal required institutions to publish in an open, interoperable and accessible format, relevant public information. The bill was however criticised by the Ombudsman's Office (*Defensoría de los Habitantes*) and the Association of Journalists because article 8 established limitations on access to public information for the prevention, investigation and punishment of criminal, administrative or disciplinary offences (Delfino, 2022[9]).

In line with the country's commitments under the Open Government Partnership, the National Open Government Commission and the Ministry of the Presidency could propose a new law that addresses the above-mentioned weaknesses, applicable to the whole public sector, including the institutionally decentralised public administration (e.g. semi-autonomous and autonomous bodies). The law could provide for the creation of an oversight body with a clear and well-disseminated mandate with adequate enforcement capacities, both in terms of competence to issue sanctions and of having adequate human and financial resources. The government could also formalise a co-ordination mechanism among Information Access Officials. Lastly, to improve compliance, the government could provide additional training and guidance to build Information Access Officials' capacity to review and respond to requests.

Costa Rica could adopt a lobbying framework ensuring transparency of any kind of lobbying activities that may take place in practice

Lobbying, understood in its traditional sense as a communication between a public official and a third party aiming at influencing public policies. It has the potential to promote democratic participation and can provide decision makers with valuable insights and information. Lobbying may also facilitate stakeholder access to public policy development and implementation. Yet, lobbying is often perceived as an opaque activity of dubious integrity, which may result in undue influence, unfair competition and policy capture to the detriment of fair, impartial and effective policy-making. This is the case in Costa Rica, where one of the main challenges that emerged during the interviews conducted by the OECD in Costa Rica is the limited – and often negative – understanding of the concept of lobbying. The benefits of making it a transparent process, including to ensure fair and equitable access to the decision-making process and to enable public scrutiny, are often not clear.

The OECD experience shows that an effective lobbying regulation should make publicly available and easily accessible, timely, comprehensive and detailed information on activities aimed at or capable of influencing government decision-making processes. In particular, this information should cover who is lobbying or influencing government, who is the target of such activities and the specific policy issue that was the subject of these activities (OECD, 2021[1]).

Article 11 of the Political Constitution of Costa Rica establishes the principles of transparency, impartiality and integrity as part of the government's work. However, Costa Rica currently lacks a specific framework that defines lobbying and lobbying activities and that could provide for transparency in lobbying. Several legislative sources touch upon the principles of integrity and transparency: the Law against Corruption and Illicit Enrichment (Law 8422 of 2004) (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*) (Article 3), Decree 32333 of 2005 - Regulations on the Law against Corruption and Illicit Enrichment (*Reglamento a la Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*) (Article 1), Decree 33146 of 2006 Ethical Principles of Civil Servants (*Principios Éticos de los Funcionarios Públicos*), and Guideline D-2-2004.

Several bills were previously discussed in Parliament, including draft Law 19251 of 2014 which proposed a Law on Lobbying in the Public Service (*Ley Reguladora del Cabildeo en la Función Pública*). However, none of these bills was passed into law. The latest proposal to adopt lobbying reforms elaborated by the Deputy of the Christian Social Unity Party (*Partido Unidad Social Cristiana*, PUSC), María Inés Solís, was introduced in the Legislative Assembly in 2019, but was not adopted in plenary (*Ley reguladora de las actividad de lobby en la administración pública*).

The OECD Recommendation on Principles for transparency and integrity in lobbying encourages countries to "provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities" (OECD, 2010[10]). There are several ways in which transparency can be achieved: first, through clearly defining the terms "lobbying" and "lobbyist", second by making relevant information available, and third, by implementing a coherent spectrum of strategies and mechanism to ensure compliance with transparency measures (OECD, 2010[10]).

Clarifying the scope of the lobbying regulation and clearly defining the terms 'lobbying' and 'lobbyist'

Clearly defining the scope of the law is critical for ensuring effective lobbying regulation. The definitions should be tailored to the specific context and sufficiently robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes. This includes clarifying: (i) who is considered as a lobbyist; (ii) what type of activities are considered as lobbying; (iii) the types of decisions that are targeted by lobbying; (iv) the categories of public officials that are targeted by lobbying. The definitions proposed in the draft bill regulating lobbying activities are described in Box 4.1.

Box 4.1. Draft bill on the regulation of lobbying activities in Costa Rica (2019)

Branches and levels of government covered

Lobbied persons were considered to be public officials with decision-making capacities (either individually or collectively) in the three branches of Government (the Presidency and Vice-Presidencies of the Republic, Ministers and Vice-Ministers of Government, the Attorney General and Deputy Attorney General as well as the attorneys of their areas of competence, Magistrates of the Plenary Court, the Prosecutor General and the Deputy Prosecutor General, the Magistrates of the Supreme Electoral Tribunal, the Comptroller General and the Deputy Comptroller General, the Deputies of the Republic and the Executive Director of the Legislative Assembly) as well as in the local levels of Government (including Mayors, Vice Mayors).

Definition of "lobbying"

The draft bill covered remunerated lobbying activities and defined lobbying as any "activity carried out by a natural or legal person, national or foreign, before the public servants that this law defines as 'lobbied persons', with the intention of directly or indirectly influencing the decision-making process, and thereby promoting their own interests or those of third parties".

The types of decisions targeted by lobbying activities included bills and laws, recommendations, agreements, resolutions, decisions, policies, plans, programmes, as well as public contracts.

Experience from other countries found that providing effective definitions remains a challenge, in particular because today's 21st century of information overload, with the rise of social media, has made the lobbying phenomenon more complex than ever before. The avenues by which stakeholders engage with governments encompass a wide range of practices and actors (OECD, 2021[1]). To address this challenge, when setting up lobbying regulation, it is critical to ensure that the definition of lobbying activities is considered more broadly and inclusively to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decision-making (OECD, 2010[10]).

The proposed definition in the draft bill imposes transparency measures comprehensively and equally on all the actors who aim to influence decision-making processes, whether for-profit or not-for-profit. This proposal enables coverage of a broad range of actors, including those that have not traditionally been viewed as "lobbyists" (e.g. think tanks, research institutions, foundations, non-governmental organisations, etc.). However, the definition only covers remunerated activities. While the OECD Recommendation on Principles for transparency and integrity in lobbying call on adherents primarily to target paid lobbyists, governments are encouraged to consider a broader and more inclusive scope of transparency measures, to enhance public scrutiny over public decision-making processes. As such, any future draft law could also include non-remunerated activities.

The proposed definition specifies "who" (i.e. public officials targeted by lobbying activities), "what" (i.e. what public decisions targeted by lobbying activities) and "how" (i.e. types of communication used.). In terms of

public decisions targeted by lobbying activities, the proposed list aligns with good practice. The types of decisions targeted by lobbying activities included bills and laws, recommendations, agreements, resolutions, decisions, policies, plans, programs, as well as public contracts. However, a comprehensive definition will have to ensure that the entire policy cycle is covered from design to evaluation phases (see Table 4.1). Within each of these stages, there are specific risks of influence, and a number of actors that could be targeted by those intending to sway decisions towards their private interests.

Table 4.1. Risks of undue influence along the policy cycle

		Agenda-setting	Policy development	Policy adoption	Policy implementation	Policy evaluation
Risk of undue influence on…		Priorities	Draft laws and regulations, policy documents (e.g. project feasibility studies, project specifications)	Votes (laws) or administrative decisions (regulations), changes to draft laws or project specifications	Implementation rules and procedures	Evaluation results
Main actors targeted	**Legislative level**	Legislators, ministerial staff, political parties	Legislators, ministerial staff, political parties	Legislators, parliamentary commissions and committees, invited experts	.	Parliamentary commissions and committees, invited experts
	Administrative level	Civil servants, technical experts, consultants	Civil servants, technical experts, consultants	Heads of administrative bodies or units	Civil servants	Civil servants, consultants (experts)

Source: (OECD, 2017[2]).

In terms of public officials, the definition provides a coherent approach to transparency at all levels of government, as it covers the three branches of government and the territorial level. In order to promote transparency and accountability, it is recommended the list of "lobbied public officials" be publicly available and kept up-to-date by each public institution. In Ireland, each public body must publish and keep up-to-date a list of designated public officials under the law; the Standards in Public Office Commission also publishes a list of public bodies with designated public officials.

Box 4.2. Requirement to publish designated public officials' details in Ireland

In Ireland, Section 6(4) of the Lobbying Act of 2015 requires each public body to publish a list showing the name, grade and brief details of the role and responsibilities of each "designated public official" of the body. The list must be kept up to date. The purpose of the list is twofold:

- To allow members of the public identify those persons who are designated public officials; and
- As a resource for lobbyists filing a return to the Register who may need to source a designated public official's details.

The list of designated public officials must be prominently displayed and easily found on the homepage of each organisation's website. The page should also contain a link to the Register of Lobbying.

Source: Standards in Public Office Commission, Requirements for public bodies, https://www.lobbying.ie/help-resources/information-for-public-bodies/requirements-for-public-bodies/.

In terms of communications considered as lobbying activities, the proposal in the draft bill is limited to oral and written communications. Similarly, the definition does not explicitly define what constitutes "direct" and "indirect" influence. This leaves out other forms of communication, such as the use of social media as a lobbying tool. Indeed, in today's 21st century context, interest groups are increasingly using social media to shape policy debates or to inform or persuade members of the public to put pressure on policy makers and indirectly influence the government decision-making process. As such, lobbying activities should not be narrowed to a communication between a lobbyist and a public official. To set up a comprehensive scope of the regulation, any subsequent draft law could be revised to ensure the transparency of any kind of lobbying activity that may take place, going beyond direct written or oral communications. Box 4.3 provides an overview of OECD member experience in setting out clear, comprehensive and broad definitions on lobbying.

Box 4.3. Examples of broad definitions of 'lobbying' amongst OECD members

Canada

Communications considered as lobbying include direct communications with a federal public office holder (i.e. either in writing or orally) and grass-roots communications. The Lobbying Act defines grassroots communications as any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion. For consultant lobbyists (lobbying on behalf of clients), arranging a meeting between a public office holder and any other person is considered as a lobbying activity.

In its August 2017 Interpretation Bulletin, the Office of Commissioner of Lobbying of Canada clarified the means used for the purpose of appealing to the general public, which may include letter and electronic messaging campaigns, advertisements, websites, social media posts and platforms such as Facebook, Twitter, LinkedIn, Snapchat, YouTube, etc.

The Commissioner also indicated that participation in the strategic and operational activities of an appeal to the general public (approving items, providing advice, conducting research and analysis, writing messages, preparing content, disseminating content, and interacting with members of the public) also requires registration.

Ireland

Relevant communications means communications (whether oral or written and however made), other than excepted communications, made personally (directly or indirectly) to a designated public official in relation to a relevant matter.

The website of the Irish lobbying register indicates that "relevant communications" can include informal communications such as casual encounters, social gatherings, social media messages directed to public officials, or "grassroots" communication, defined as an activity where an organisation instructs its members or supporters to contact public officials on a particular matter.

European Union

In the European Union, the Inter-institutional agreement between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register defines "covered activities" as: (a) organising or participating in meetings, conferences or events, as well as engaging in any similar contacts with Union institutions; (b) contributing to or participating in consultations, hearings or other similar initiatives; (c) organising communication campaigns, platforms, networks and grassroots initiatives; (d) preparing or commissioning policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material, and commissioning and carrying out research.

Source: (Office of the Commissioner of Lobbying of Canada, 2017[11]; OECD, 2021[1]).

Lastly, definitions should also clearly specify the type of communications with public officials that are not considered 'lobbying'. Some activities are relevant to exclude, for example information provided during a meeting of a public nature and for which information is already made available. In Canada, the Lobbying Act exempts "any oral or written submission made to a committee of the Senate or House of Commons or of both Houses of Parliament or to any body or person having jurisdiction or powers conferred by or under an Act of Parliament, in proceedings that are a matter of public record". However, there are certain exclusions that were foreseen in the draft bill that merit particular attention, as they may create important loopholes. First, the bill proposed to exclude any information provided at the request of a public official for the exercise of activities or the adoption of measures within its sphere of competence. Second, the bill excluded communications made to enquire about the status of a particular administrative procedure or draft legislation. The exemptions could further be clarified to avoid any misinterpretations:

- The exception could cover communications by lobbyists made in response to a request from a public official concerning factual information or for the sole purpose of answering technical questions from a public office holder, and provided that the response does not otherwise seek to influence such a decision or cannot be considered as seeking to influence such a decision. In the United Kingdom for example, if a designated public official initiates communication with an organisation and in the subsequent course of the exchange, the criteria for lobbying are met, then the organisation is required to register the activity.
- The law could further clarify which requests for information by lobbyists are covered by the exemption, for example when they consist of enquiring about the status of an administrative procedure, about the interpretation of a law, or that are intended to inform a client on a general legal situation or on his specific legal situation.

Third, the bill excluded consultancy services provided to public bodies and members of Parliament by professionals and researchers from non-profit associations, corporations, foundations, universities, research centres. It is, however, not recommended to exclude from registration consultative process with any such individuals or entities. This aspect is further covered in Section 2 of this chapter.

Enabling effective transparency

A critical element for enhancing transparency in public decision making are mechanisms through which public officials, business and society can obtain sufficient information regarding who has had access and on what issues (OECD, 2010[10]). Such mechanisms should ensure that sufficient, pertinent information on key aspects of lobbying activities is disclosed in a timely manner, with the ultimate aim of enabling public scrutiny (OECD, 2010[10]). In particular, disclosed information could include which legislation, proposals, regulations or decisions were targeted by lobbyists.

In Costa Rica, the draft bill proposed that two key registers be set up: a Public Agenda Register and a Register of Lobbyists. First, the law provided for a "**public agenda register**", administered by the Attorney for Public Ethics (*Procuraduria de la Ética Pública*, PEP), centralising information on public officials' public agendas. Public officials would have the obligation to designate a person in charge within his/her office to keep a "public agenda record" of the official, including information on the meetings requested by lobbyists. The following information would have to be disclosed: (i) place and date of the meeting, (ii) specific subject matter or topic to be discussed, (iii) name of the persons who attended, and (iv) the companies or organisations represented. The draft Law also required lobbied public officials to disclose in their public agenda information on their travels (destination, purpose, agenda, total costs and public institution financing the travel) as well as official and protocol donations received as a courtesy in the performance of their duties (details of the gift or donation received, date and occasion of receipt, natural or legal person from who it was received).

The PEP was also foreseen to administer a **"public register of lobbyists"**, based on information provided by each entity or institution of the State. The public register of lobbyists would contain the name of the

person who lobbies, an indication of whether he/she receives remuneration for this activity, the name of the natural or legal person for whom the meeting or hearing has been requested and of the person who is presumed to remunerate the lobbyist for his/her work.

The information required would enable scrutiny, as information concerning what was influenced and the intended results is not only required, but also made public. However, it would be limited to meetings and hearing, leaving an important part of lobbying activities in the shadows.

In addition, while public officials have the prime responsibility to demonstrate and ensure the transparency of the decision-making process, the proposed approach in this law may result unbalanced as it lays on them all the responsibility of recording lobbying activities. Lobbyists and their clients also share an obligation to ensure that they avoid exercising illicit influence and comply with professional standards in their relations with public officials, with other lobbyists and their clients, and with the public.

The proposal could therefore be complemented by a separate mechanism for reporting all influence efforts, in the form of mandatory disclosures from lobbyists on a semestrial or quarterly basis in the register of lobbyists, as an additional avenue for transparency. Examples are provided in Table 4.2. In countries that combine lobbying registers and open agendas (e.g. the United Kingdom), cross-checking agendas and lobbying registers may also provide an opportunity to cross-check information and analyse who tried to influence public officials and how. In the United Kingdom for example, the Office of the Registrar of Consultant Lobbyists cross-checks lobbyists registered with ministerial open agendas, to monitor and enforce compliance with the requirements set out by the Transparency of Lobbying Act.

Table 4.2. Frequency and content of lobbying disclosures in the United States and Ireland

	Registration		Content of disclosures	
	Initial registration	**Subsequent registration**	**Initial registration**	**Subsequent registration**
Ireland	Lobbyists' registration is mandatory to conduct lobbying activities. Lobbyists can register after commencing lobbying, provided that they register and submit a return of lobbying activity within 21 days of the end of the first "relevant period" in which they begin lobbying (The relevant period is the four months ending on the last day of April, August and December each year).	The 'returns' of lobbying activities are made at the end of each 'relevant period', every four months. They are published as soon as they are submitted.	**"Applications":** 1. The person's name; 2. The address at which the person carries on business; 3. The person's business or main activities; 4. Any e-mail address, telephone number or website address relating to the person's business or main activities; 5. Any registration number issued by the Companies Registration Office; 6. (if a company) the person's registered office. The application shall contain a statement by the person by whom it is made that the information contained in it is correct.	1. Information relating to the client (name, address, main activities, contact details, registration number); 2. The designated public officials to whom the communications concerned were made and the body by which they are employed; 3. The relevant matter of those communications and the results they were intended to secure; 4. The type and extent of the lobbying activities, including any "grassroots communications"; 5. The name of the individual who had primary responsibility for carrying on the lobbying activities; 6. The name of each person who is or has been a designated public official employed by, or providing services to, the registered person and who was engaged in carrying on lobbying activities.
United States	Lobbyists' registration is mandatory to conduct lobbying activities. Registration is required within 45 days: (i) of the date lobbyist is employed or retained to make a lobbying contact on behalf of a client; (ii) of the date an in-house lobbyist makes a second lobbying contact	Lobbyists must file quarterly reports on lobbying activities and semi-annual reports on political contributions.	1. Contact details, information on clients (one registration per client) and/or the employer. 2. Information on the intended subjects of their lobbying activities. 3. Estimation of payment received or expenditures incurred for lobbying activities.	**Quarterly reports** on lobbying activities (LD-2), including: 1. General lobbying issue area code(s). 2. Specific issues on which the lobbyist(s) engaged in lobbying activities. 3. Houses of Congress and specific Federal Agencies contacted. 4. Disclosing the lobbyists who had any activity in the general issue area. **Semi-annual reports** on certain contributions detailing political contributions and attesting to their compliance with Congress' Code of Conduct as regards gifts.

Source: (OECD, 2021[1]).

A key challenge in implementing transparency registers is ensuring that the collected information can be published in an open, re-usable format. This facilitates the reusability and cross-checking of data. In terms of accessibility information, the information should be public and accessible free of charge on a single only platform (OECD, 2021[1]). A similar approach seemed to have been followed in the draft law regulating lobbying activities in the public administration, which gave each organisation the responsibility to ensure that the required institutions register and update information. The draft law also provided for a single registry administered by the PEP where citizens could consult all the lobbying-related information across branches of government. In the event that a similar law is adopted, Costa Rica could learn from the experience of Chile's Transparency Council's single platform (Info Lobby) which contains all the lobbying-related information of the country (Box 4.4).

Box 4.4. Chile's innovative platform presents data on influence on national public decisions

The on-line portal allowing citizens to obtain information about lobbying in Chile called Info Lobby (infolobby.cl) is managed by Transparency Council (*Consejo para la Transparencia*), the co-ordination body overseeing the implementation of the Transparency Law and, in particular, promoting transparency, monitoring compliance, and guaranteeing the right to access to information.

With regard to lobbying, it is also in charge of making all registers of every institution accessible in a user-friendly website. For this purpose, all subjects covered by the lobbying regulation have to send relevant information to the Council, which will then publish it in the on-line portal. These not only include lobbying-related information – which are then organised according to several criteria (paid/unpaid lobbyist, lobbyist client, institution, public officials ranking and subject matter) – but also information about public officials 'travels and donations, which are also to be disclosed according to Lobbying Law 20730.

The datasets can be downloaded to review or reuse further data collected by the Council.

Source: (OECD, 2021[1]).

Mechanisms for Effective Implementation, Compliance and Review

Transparency requirements cannot achieve their objective unless the regulated actors comply with them and oversight entities effectively enforce them. To that end, oversight mechanisms are an essential feature to ensure an effective lobbying regulation. The OECD Recommendation on Principles for Transparency and Integrity in Lobbying encourages countries to design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. Countries use several measures through their oversight institutions to promote compliance with transparency requirements and tend to favour communication and engagement with lobbyists and public officials. Tools include providing a convenient online registration and report-filing system, raising awareness of the regulations, verifying disclosures on lobbying (including delays, accuracy and completeness of the information disclosed, unregistered activities), sending formal notices to lobbyists to advise of potential breaches, requesting modifications of the information declared and applying visible and proportional sanctions (OECD, 2021[1]).

The draft bill proposed that the operation of key aspects of the lobbing regulation and its enforcement should be entrusted to the PEP. This proposal aligns with good practice from OECD members. It is not uncommon to assign the oversight body responsible for integrity standards of elected and appointed officials with responsibilities for lobbying regulation. Yet, the bill could clarify the compliance and enforcement responsibilities in the area of lobbying and ensure they have sufficient resources to carry out these responsibilities. The bill does not contemplate sanctions for lobbyists – only for public officials – and relies solely on reporting by public officials for monitoring purposes. In the event of non-compliance with

any of the obligations provided for in the bill, the person holding the highest authority of the public entity or institution where it occurs shall be responsible for initiating the corresponding administrative procedure in accordance with the rules provided for in the General Law on Public Administration for this purpose.

The PEP would be responsible for communicating the collection of the corresponding pecuniary sanction to the public officials or entities who commits any of the offences listed below:

- Failure by the institutional hierarchy to establish the public agenda register within the public body, entity or institution.
- Failure by lobbied persons to disclose relevant information meetings requested by lobbyists and meetings held.
- Failure, by a person designated by public institutions to publish and keep up to date the register of lobbyists.
- Failure, for the senior manager responsible for human resources in each public organisation, to indicate in the corresponding register the persons who have a status of “lobbied person” according to the law.

The names of the person or persons sanctioned would be published on the websites of the respective body, entity or institution for a period of one month after the resolution establishing the sanction has become final. This is line with OECD best practices, in countries with similar regulations.

Yet, for the system to be effective, it is necessary to conduct monitoring activities and hold lobbyists accountable. At the OECD level, all countries with a transparency register on lobbying activities have an institution or function responsible for monitoring compliance. Most of these bodies or functions monitor compliance with disclosure obligations and whether the information submitted is accurate, presented in a timely fashion and complete. These functions are usually specified in the relevant lobbying law or regulation. Verification activities include for example verifying compliance with disclosure obligations (i.e. existence of declarations, delays, unregistered lobbyists), as well as verifying the accuracy and completeness of the information declared in the declarations.

Investigative processes and tools include:

- Random review of registrations and information disclosed or review of all registrations and information disclosed.
- Verification of public complaints and reports of misconducts.
- Inspections (off-side and/or on-site controls may be performed).
- Inquiries (requests for further information).
- Hearings with other stakeholders.

In Canada for example, the Office of the Commissioner of Lobbying can verify the information contained in any return or other document submitted to the Commissioner under the Act. The Commissioner can conduct an investigation if there is reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or the Act. This allows the Commissioner to conduct targeted verifications in sectors considered to be at higher risk or during particular periods. Furthermore, the Commissioner can ask present and former designed public officials to confirm the accuracy and completeness of lobbying disclosures by lobbyists, summon and enforce the attendance of persons before the Commissioner and compel them to give oral or written evidence on oath, as well as compel persons to produce any document or other things that the Commissioner considers relevant for the investigation.

Using data analytics and artificial intelligence can facilitate the verification and analysis of data. In France for example, the High Authority for Transparency in Public Life has set up an automatic verification mechanism using an algorithm based on artificial intelligence, to detect potential flaws upon validation of annual lobbying activity reports (Box 4.5).

Box 4.5. France is using artificial intelligence to enhance the quality of annual lobbying reports

In France, registered lobbyists must submit an annual activity report to the High Authority for Transparency in Public Life (HATVP) within three months of the lobbyist's financial year. In analysing the activity reports for the period 1 July 2017 to 31 December 2017, the HATVP noted the poor quality of some of the activity reports, due to a lack of understanding of what should be disclosed. Over half of the 6 000 activity reports analysed did not meet any of the expected criteria. Often, the section describing the issues covered by lobbying activities – identified by their purpose and area of intervention – was used to report on general events, activities or dates of specific meetings.

In January 2019, the HATVP set up various mechanisms to enhance the quality of information declared in activity reports. Practical guidance was provided explaining how the section on lobbying activities should be completed, with a pop-up window presenting two good examples. An algorithm based on artificial intelligence was established to detect potential defects on validation of the activity report, and detect incomplete or misleading declarations

Source: (OECD, 2021[11])

In addition, although they may be different in nature, most legislation provides for disciplinary or administrative sanctions for lobbyists. The 2010 OECD Recommendation provides examples of sanctions and notes that visible and proportional sanctions should combine innovative approaches, such as: public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate. The practice has also shown that a graduated system of administrative sanctions appears to be preferable as countries that have established lobbying rules and guidelines provide for a range of graduated disciplinary or administrative sanctions, such as warnings or reprimands, fines, debarment and temporary or permanent suspension from the Register and prohibition to exercise lobbying activities.

For this purpose, Costa Rica could consider the example of Canada, whose legal framework spells out the exact consequences of breaching the lobbying framework. The sanctions should have a sufficient deterrent effect. In many OECD countries, indeed, a common challenge identified are sanctions that are likely to be perceived as light by the person concerned. In France for example, the High Authority for Transparency in Public Life concluded that the maximum amount for fines incurred for legal persons (EUR 75 000) is negligible for large companies.

While transparency in political finance is greater than on lobbying, Costa Rica could strengthen transparency and integrity in election processes by specifying contribution and spending limits and include restrictions on online media advertisement

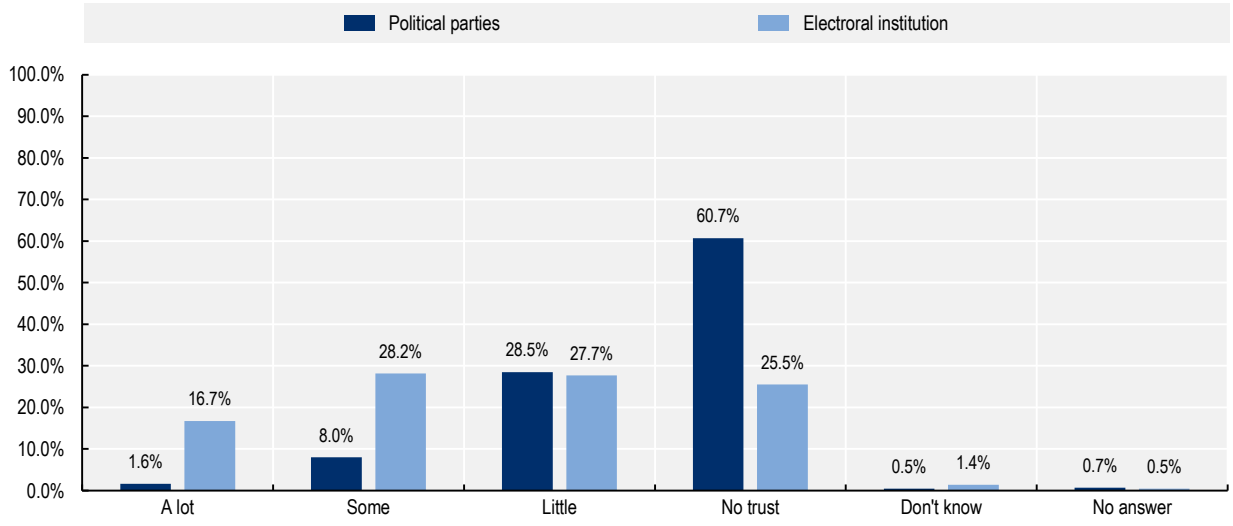
Beyond lobbying public officials, a way to influence policy making is to exert control over the election of representatives who will vote for or against certain policies or who are able to pressure the public administration to take certain decisions. Specific interest groups can help politicians get elected into office and later ask for favours in return. This can be achieved, for instance, by providing financial contributions to candidates or political parties and their campaigns, by providing other kinds of non-monetary

advantages, such as access to private media services (for example, opposition research), or by helping politicians gain votes through vote-buying or by organising and mobilising voters.

Similar to lobbying, political finance is a necessary component of the democratic process: it enables the expression of political support and competition in elections. But without the necessary guardrails, some practices can endanger the legitimacy of democratic systems. In addition to the widespread perception of citizens in Costa Rica that those who govern them are doing so to favour of small, powerful groups and not the public interest (Figure 4.1), evidence indicates growing discontent with democracy. According to the 2020 Latinobarómetro, 89.2% of Costa Rican respondents have little or no trust in political parties, while 53.2% have little or no trust in electoral institutions (Figure 4.4). Also in 2020, 73.3% of Costa Ricans are either "not very satisfied" or not "satisfied at all" with democracy; those who declare themselves to be "very satisfied" with democracy declined from 20.9% in 2010 to just 9.3% in 2020 (La Corporación Latinobarómetro, 2021[76]).

Figure 4.4. Trust in political parties and electoral institutions in Costa Rica

Respondents were asked the following question: "Please look at this card and tell me how much trust you have in each of the following groups/institutions. Would you say you have a lot, some, a little or no trust in?"



Note: This survey has been conducted in 18 countries in the region (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Peru, Dominican Republican, Uruguay, and Venezuela)
Source: Latinobarómetro (2021), https://www.latinobarometro.org/latOnline.jsp

In light of the provisions of Article 96 of the Constitution, Costa Rica operates a mixed party financing regime, which is permeated by the principles of publicity and transparency; maxims that, as outlined by the Constitutional Chamber of the Supreme Court of Justice and the Supreme Electoral Tribunal, compel political groups, the intervening banking entities and the Electoral Administration itself to facilitate and publicise the financial information of political groups.

Regarding public funding, most OECD member countries have provisions for direct public funding to political parties, for their ordinary activities as well as their election campaigns. Public funds can guarantee political parties the minimum resources needed to develop political and representative activities in democracies, pay ordinary expenses, maintain representative and participation bodies and organise electoral campaigns. The eligibility criteria for receiving these funds can be based on the share of votes in elections (as in France, Australia, Mexico or the USA) or their representation in elected bodies (as in the

UK, Austria or Japan). These criteria assure the allocation of public funds to legitimate political contenders and avoid incentivising the creation of parties and candidatures with the sole objective of receiving state resources.

In Costa Rica, direct public funding is provided to political parties both regularly and in relation to campaigns. Article 96 of the Constitution prescribes the Costa Rican State to contribute to the expenses of political parties, under the following provisions:

- 0.19% of the Gross Domestic Product of the year after the National Elections will be earmarked for this purpose.
- The state's contribution will be oriented to defraying electoral expenses, as well as to face ordinary and permanent expenses for political organisation and training.
- Those political parties which, having participated in the national electoral process, obtain at least 4% of the valid votes cast at national or provincial level (in the event that their participation has not been in all of the country's constituencies) or obtain a seat in the Legislative Assembly, shall be eligible to receive part of the state contribution.
- In order to receive the state contribution to which they have acquired the right, political parties must prove their expenses before the Supreme Electoral Tribunal.

This constitutional scheme – applicable only in the framework of national elections – was replicated in the Electoral Code, extending direct public funding to political groups in municipal elections. This is clarified in Articles 91, 99, 100, 101 and 102 of the Code, which stipulate that:

- The State shall contribute 0.03% of the Gross Domestic Product to cover the expenses incurred by political parties entitled to them for their participation in municipal electoral processes.
- Political parties shall be entitled to receive part of the state contribution if, having participated in the respective municipal elections, they have obtained at least 4% of the votes validly cast in the respective canton for the election of a mayor or councillors, or elected at least one councillor.
- To receive the state contribution, political parties must prove and settle their expenses, in accordance with the provisions of the Electoral Code.

As such, direct public financing in Costa Rica operates as a reimbursement mechanism, by virtue of which political groups incur, with their own funds, in electoral, organisational and training expenses, and, depending on the support received at the polls, may obtain public funding once these expenses have been duly verified by the Electoral Administration. To avoid any bias and governmental advantages concerning public funds, it would be desirable for Costa Rica to also introduce provisions for free or subsidised access to media for political parties and candidates, which are currently absent from regulations.

With regards to private donations, Costa Rica, like most OECD member countries, regulates private funding to ensure a level playing field among parties and candidates (OECD, 2016[84]). Private funding allows for support from society-at-large for a political party or candidate. It is widely recognised as a fundamental right of citizens. Yet if private funding is not adequately regulated, it can be easily exploited by special private interests. The main challenge with respect to private funding is to address the high level of informality that endangers accountability. In the worst case, informality facilitates funds from illicit origins flowing into political parties and campaigns that may lead to organised crime corrupting democratic institutions (Box 4.6).

There are no easy solutions to limit the problem of illicit or undeclared funding, however. More than merely prohibiting informal contributions, inducements have to be provided in a way that private donations are channelled as much as possible through formal means. This can be achieved by adequately framing the rules of the game for private funding, by establishing clear limits on private donations, prohibiting donations in cash and allowing contributions by legal entities up to a certain amount (OECD, 2016[84]).

Box 4.6. Corruption, lobbying and state capture by organised crime: An overview

Although it is a global problem, Latin America is particularly vulnerable to the building of nexus between organised crime and the State. According to Burchner (2014) this happens because in countries in the region there is a strong presence of illicit networks that engage in activities such as “illegal mining, trafficking in exotic species and arms, counterfeiting and smuggling of medicines and the production and sale of illegal drugs”. The latter brings massive amounts of illicit money at the same time that there are rising costs of political activity and the complexity to monitor political spending, which is fertile ground for electoral corruption.

For her part, Rose-Ackerman (2016) argues that there is a symbiotic relationship between corruption and organised crime. These organisations may dominate legal or illegal businesses and have a “corrupting influence on government, especially law enforcement and border control”. Criminal organisations make payments to government representatives and undermine state institutions and, as they mature, they intertwine with civil society and the state, which may lead to manipulating the law in their favour.

In these terms, Rose-Ackerman (2016) identifies at least five possible ways in which criminal organisations engage in corrupt activities The first is extortion, in which if the police are “bought off or unreliable”, the groups demand protection money from businesses to avoid attacking them. The second is by engaging in legitimate business activity and discouraging competition by the threat of violence and by bribing public officials so they do not act. The third uses a similar strategy to sell pirate goods and avoid paying taxes. The fourth is by becoming government contractors and winning tenders using their “criminal muscle”. This may include extortion or funding campaigns. The last, and most extreme is by transforming the regime in which they are so integrated that it is hard to distinguish it from the state (e.g. some parts of the Soviet Union after its collapse or some drug producing countries).

Source: (Burchner, 2014[13]; Rose-Ackerman and Palifka, 2016[14]).

In Costa Rica, banned donations to political parties include anonymous donations, donations from foreign interests, corporate donations, trade unions, corporations with government contracts, corporations with partial government ownership (Electoral Code, Articles 124, 125, 128, 274, 275). Despite these limitations, the regulations do authorise international organisations dedicated to the development of culture, political participation and the defence of democratic values to collaborate with political groups in their training and education processes for their activists and candidates. For these purposes, these organisations must be previously accredited before the Supreme Electoral Tribunal.

However, there are currently no limits on the amount a donor can contribute to a political party during a non-election specific period and during an election. Similarly, there are no limits on in-kind donations to political parties and candidates and there is no ban on candidates taking loans in relation to election campaigns. The absence of any limits can provide incentives to channel funds informally to the political parties.

In Brazil for example, the Supreme Court ruled in 2015 the unconstitutionality of contributions from private legal entities, which previously allowed corporate donations to political parties and candidates. However, data from the 2018 elections showed that 90% of elected deputies received donations from individuals linked to private companies in Brazil (OECD, 2022[69]). In Quebec, the Charbonneau Commission, which was set up following a major corruption scandal in Quebec’s constructor sector, had proposed to "protect the financing of political parties from influence in order to draw a line between legitimate influence relationships in a democratic society and others”. The Commission recommended, among other recommendations, combating the use of nominees in political financing, which has allowed some

companies to finance provincial and municipal political parties by asking their employees and relatives to make personal contributions that are reimbursed by the company, by requiring the identification of the political contributor's employer in the political parties' returns. As such, Costa Rica could consider introducing maximum amount to avoid donations being given informally and elude too-low thresholds.

With regards to campaign spending, the Costa Rican legal-electoral system does not contemplate limitations or "ceilings" on campaign expenses incurred by political groups, coalitions or their candidacies, but rather favours transparency. However, in order to ensure a minimum of fairness in electoral fairs and their transparency for citizens, the Electoral Code does prescribe the need for some of the services – which are usually triggers for campaign expenses – to be provided under specific regulations that allow for some degree of scrutiny by the Supreme Electoral Tribunal. This is the case of electoral propaganda services, as well as opinion polls and surveys. In accordance with the provisions contained in article 139 of the Electoral Code, only companies registered by their representatives before the Supreme Electoral Tribunal may provide electoral propaganda services during the electoral period; registration compels these providers to offer their services subject to the reported rates and to guarantee equal conditions and treatment to all political parties participating in the electoral contest.

In the case of political-electoral surveys and opinion polls, these may only be provided by institutes, universities, companies and any public or private entity, which are duly and previously registered with the Supreme Electoral Tribunal. The regulations pertaining to the process of registration of these providers have been developed in the "Regulations on the registration of political-electoral opinion polls and surveys" (TSE Decree 18-2009 of 15 October 2009). The dissemination or publication, in whole or in part, by any means, of opinion polls and surveys relating to electoral processes by unregistered providers is strictly prohibited during the electoral campaign period.

An emerging challenge for all countries is the increase in misinformation and polarisation (V-Dem Institute, 2022[87]). Several stakeholders in Costa Rica interviewed for this report raised the challenges posed by social media, the risk of mis- and dis-information during elections and the need to raise awareness on responsible online practices. In Costa Rica, there are currently no limits on traditional media advertising and no limits on online media advertising in relation to campaigns. Similarly, there are no limits on the amount that third parties can spend on election campaign activities. This means private contributions can be rechannelled through supposedly independent committees and interest groups such as charities, faith groups, trade associations, individuals or private firms that campaign in the run-up to elections, but do not stand as political parties or candidates and are not always required to disclose their donors. Costa Rica could therefore consider introducing provisions on third party spending as well as the use of traditional and social media, such as in Quebec (Box 4.7).

Box 4.7. Regulation of partisan interventions by third parties in Quebec

Within the meaning of the electoral laws, it is prohibited for third-party groups, including any organisation acting neither on behalf of a political party nor on behalf of a candidate (businesses, NPOs, legal persons or partnerships, associations, unions, organisations or groups of persons) to make partisan interventions during an election period. An intervention is considered partisan if it offers visibility to a party or a candidate, for example by promoting or opposing the election of a candidate, and if it generates costs, for example the printing of documents, such as posters or pamphlets, as well as the creation of a website or the purchase of advertisements on social media.

These rules apply in provincial elections, in municipal elections in municipalities with a population of 5 000 or more, and in school elections. For example:

- An individual **may not print posters** promoting a candidate at his or her own expense in the workplace or in any other public place.
- A business **may not buy an advertisement** in a newspaper to denounce the position of a party or candidate on an issue.
- A non-profit **organisation cannot post a PDF brochure** that rates the policies of candidates in its municipality on a scale of 1 to 10.
- A union **cannot pay for a Facebook ad** that promotes or opposes a party or candidate policy.
- An association **cannot create a website** to support a candidate or party, as there is a cost to creating and maintaining that website.

As of June 10, 2016, the Chief Electoral Officer has the power to claim from a political entity a contribution or part of a contribution for which he or she has convincing evidence that it was made contrary to election laws, regardless of when the contribution was made. In the interest of public transparency, the election laws further provide that the Chief Electoral Officer shall make public on his website, 30 days after the receipt of the claim for contributions to a political entity, various information related to those contributions as of June 10, 2016. Whether or not the political entity has made the repayment is also indicated.

Source: Élections Québec, Intervenir dans le débat électoral, https://www.electionsquebec.qc.ca/francais/municipal/financement-et-depenses-electorales/intervenir-debat-electoral.php.

Lastly, similar to lobbying regulations, even with strong regulations on paper, weak monitoring and enforcement can open the door for interest groups or individuals to seek informal ways to exert influence. In addition, if sanctions are too low, political parties may just factor them in as a cost and continue with the practices that are breaching the law, as the benefits from doing so outweigh the costs. Enforcing regulations has two components; on the one hand, breaches must be effectively detected, on the other hand, detected breaches must be effectively sanctioned.

To enable effective enforcement of political finance regulations, transparency is essential. Transparency is a key component in ensuring that citizens and the media can serve as watchdogs to effectively scrutinise political actors. In Costa Rica, contributions and donations are subject to the principles of publicity and transparency. The Supreme Electoral Tribunal made clear in its Resolution 4333-E7-2019 that the documentation that makes up party expenditure statements and its financial statement reports are also to be made public.

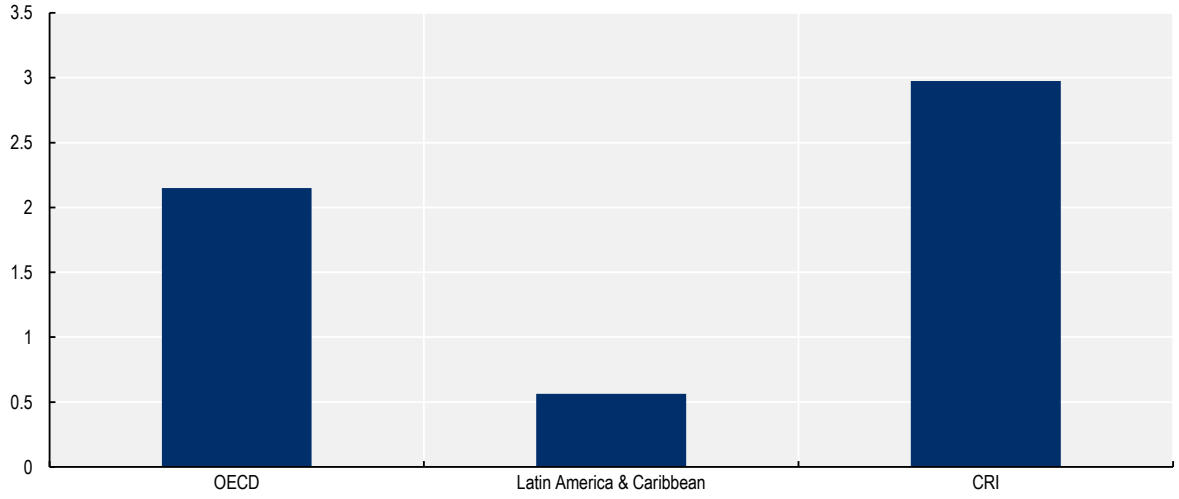
In concrete terms, the Electoral Code requires all political groups registered with the Electoral Register to periodically submit a report on their financial statements, as well as a report on their donations and contributions. In accordance with the provisions of Article 135 of the Electoral Code, political groups are obliged to submit an audited statement of their finances every October, which must include a list of their contributors and donors, with an express indication of their names, identity cards and the amount contributed by each one during the respective year. The idea behind requiring the identity of private donors to be unveiled is to foster social accountability through transparency: if citizens know about the links between private interests and politicians, they are able to detect situations in which politicians are in a conflict-of-interest situation and are acting in the interests of their electoral campaign contributors.

In addition to this annual report, political groups registered with the Electoral Register, in accordance with Articles 88, 132 and 133 of the Electoral Code, are also obliged to submit a quarterly report on their financial statements (i.e. certified copies of the auxiliary of the bank account containing the deposit number, the bank statement and the accounting statements for the corresponding period, issued by an authorised public accountant) and a report on contributions, donations and contributions. As required by electoral regulations, during the campaign period this documentation must be submitted by all registered political parties on a monthly basis.

In accordance with these norms and principles, as well as the mandate contained in Article 132 of the Electoral Code, all accounting information of political parties is accessible to the public through the Supreme Electoral Tribunal and much of it is available for consultation on the institutional website (https://tse.go.cr/partidos_politicos.htm). As such, this high level of transparency of transparency places Costa Rica among best practices in OECD countries, according to the Varieties of Democracy Index (Figure 4.5).

Figure 4.5. Disclosure of campaign donations, Costa Rica, OECD and Latin American and Caribbean average

Averages, 2021



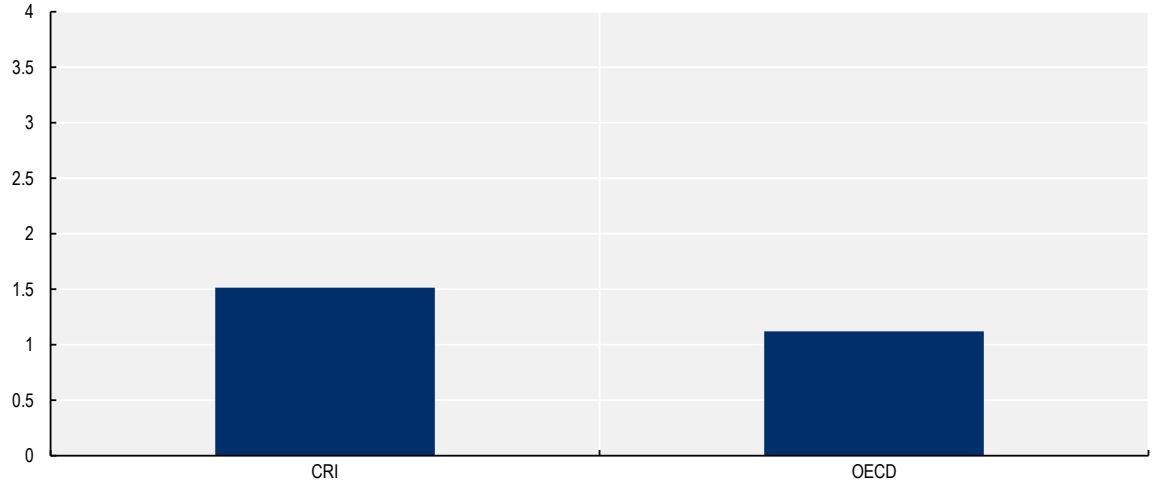
Note: the index "disclosure of campaign donations" measures to what extent there are disclosure requirements for donations to national election campaigns. The higher the value on the indicator, the more comprehensive, controlled and enforced are the disclosure requirements of donations to electoral campaigns.
Source: Varieties of Democracy (V-DEM) Index, https://www.v-dem.net/.

The Supreme Electoral Tribunal receives and examines reports from political parties, can carry out investigations and impose sanctions. In OECD countries, sanctions range from financial to criminal and political sanctions. Parties may have to pay fines (74% of member countries), have their illegal donations or funds confiscated (44%), or lose public subsidies (47%) in cases of violation. More severe sanctions include criminal charges such as imprisonment (71% of member countries), loss of elected office (18%), forfeiting the right to run for election, or even deregistration (21%) or suspension (3%) from a political party (OECD, 2016[84]). The Costa Rican Electoral Code punishes, with pecuniary penalties or imprisonment, violations of the party financing regime by political parties, their suppliers, their donors and even the banks involved. The Code classifies as misdemeanours – punishable by monetary penalties – the violations that the Electoral Administration verifies of sections 88, 122, 123, 127, 128 and 129 of this body of law. The prosecution of electoral offences is reserved, by imperative of Article 285 of the Electoral Code, to the bodies of the criminal jurisdiction.

In turn, Costa Rica could take a clear stance against vote-buying by explicitly prohibiting vote buying and introducing sanctions for such practices. Vote buying refers to the distribution of money or gifts to individuals, families or small groups in order to influence their vote choice or turnout. According to the Varieties of Democracy Index, Costa Rica scores 1.5/4 on the index of vote buying, which indicates that non-systematic but rather common vote-buying efforts can be observed (Figure 4.6). Therefore, Costa Rica could stipulate vote buying as an illicit practice prohibited by law. In addition, Costa Rica should clearly define and prohibit other clientelistic practices, specify sanctions for those who provide benefits to citizens with the aim to influence their votes and regulate the provision of material goods during campaigns.

Figure 4.6. Prevalence of vote buying in Costa Rica

Average, 2018



Note: Vote buying is measured as the prevalence of vote or turnout buying during each election year. The level of vote or turnout buying is an interval measure ranging from 0 (systemic vote or turnout buying) to 4 (no evidence of either occurring)
Source: Varieties of Democracy (V-DEM) Index, https://www.v-dem.net/

Lastly, in the event that a lobbying regulation is adopted, and to enable better control of contributions as well as to mitigate the risk of money from illegal activities entering into political finance, Costa Rica could strengthen the co-ordination and the sharing of information on lobbying and political finance. In the United States for example, the Supreme Audit Institution (SAI), the Government Accountability Office (GAO), relies on the accessibility of databases as well as on the informal exchange of information between entities to cross-check lobbying disclosure requirements and political contributions.

Box 4.8. Cross-checking lobbying disclosures and political contributions in the United States

In the United States, the Lobbying Disclosure Act requires disclosures on both lobbying activity and political contributions. To determine whether lobbyists reported their federal political contributions, as required by the Act, the Government Accountability Office (GAO) analysed stratified random samples of year-end 2017 and mid-year 2018 semi-annual political contributions reports. The samples contained 80 reports listing contributions and 80 that listed no contributions. Contributions listed on lobbyists' and lobbying firms' political contributions reports were compared against political contributions reported in the Federal Election Commission database, to identify whether the reports omitted any contributions.

The GAO estimated that in 2018, lobbyists failed to disclose one or more reportable contributions on 33 percent of reports. Eight political contributions reports were amended in response to its review.

Source: (OECD, 2021[1]).

Costa Rica could enable interoperability of the newly implemented beneficial ownership register with future lobbying registers to strengthen transparency and scrutiny on who is ultimately benefiting from a lobbying activity

In addition to strengthening transparency as to who is influencing the policy-making process, transparency and an effective exchange of information can be introduced on who is the beneficial owner of a legal entity, or who is ultimately benefiting from the lobbying activity. Transparency and scrutiny would necessitate public disclosure of the beneficial owner of companies influencing the policy-making process. The term "beneficial owner" refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate control over a legal person or arrangement.

Disclosure of beneficial ownership has been a contentious issue in Costa Rica. Major shareholders and beneficial owners have sought to guard their privacy rights and attempts to draft laws to promote greater transparency have been contested in the Legislative Assembly (OECD, 2020[88]).

Previous OECD reviews of corporate governance identified difficulties in identifying conflict-of-interest situations and who may be involved in a related party transaction based on publicly available information. The fundamental impediments to transparency were the Data Protection Law and privacy rights embedded in the Political Constitution restricting disclosure of beneficial ownership.

Since then, Costa Rica has implemented stricter beneficial ownership requirements and strengthened its compliance with the international standards on transparency and exchange of information. In particular, Costa Rica has recently enacted the Law to Enhance the Combat against Tax Fraud (*Ley para Mejorar la Lucha Contra el Fraude Fiscal*). This law puts an obligation on companies to disclose their capital and individuals with majority ownership in a new registry of shareholders managed by the Central Bank (*Registro de transparencia y beneficiarios finales*). In the first two years of implementation, tax authorities encountered reticence to disclose information on beneficial owners and extended several times the term to comply with the obligation, which made it difficult to gain a full appreciation of capital structures, control arrangements and related party transactions. Ensuring full implementation of the law and improving the timeliness of providing requested information to partners are the next priorities.

The implementation of any future lobbying registers could involve further interoperability of the various databases, including the newly implemented register of financial beneficiaries. Cross-checking available information makes it possible to assess the consistency between data provided from various sources and will strengthen transparency and scrutiny on who is ultimately benefiting from a lobbying activity.

Establishing transparency and integrity frameworks for all persons and bodies providing advice to government

Costa Rica could adopt binding rules for the selection process of advisory or expert groups

Governments across the OECD make wide use of advisory and expert groups to inform the design and implementation of public policy. During the COVID-19 crisis, for example, many governments have established ad hoc institutional arrangements to provide scientific advice and technical expertise to guide their immediate responses and recovery plans (OECD, 2021[1]). An advisory or expert group refers to any committee, board, commission, council, conference, panel, task force or similar group, or any subcommittee or other subgroup thereof, that provides advice, expertise or recommendations to governments. Such groups are composed of public and private sector members and/or representatives from civil society and may be set up by the executive, legislative or judicial branches of government.

Chairpersons and members of advisory or expert groups (including government boards and committees) can help strengthen evidence-based decision making. However, without sufficient transparency and safeguards against conflict of interest, they may risk undermining the legitimacy of their advice by allowing individual representatives participating in these groups to favour private interests, whether done unconsciously or not (e.g. by serving biased evidence to the decision makers on behalf of companies or industries or by allowing corporate executives or lobbyists advise governments as members of an advisory group). Still, transparency over the composition and functioning of advisory and expert groups remains a challenge across OECD countries.

In Costa Rica, the National Assembly and several ministries have set up such advisory groups. For example, Joint Special Committees made up of deputies and external advisors are appointed by the legislative Assembly to study a specific matter or to carry out a mission. Similarly, the Health Ministry has put in place boards and committees that provide advice and guidance on specific health policies. Some of these groups were created through specific regulations, such as the National Council for Comprehensive HIV-AIDS Care (*Consejo Nacional de Atención Integral del VIH-SIDA*), which was created in 1999 through the Regulations of the General Law on HIV-AIDS, AL-1380-99, No. 27894-S. In addition, Article 91 of the Rules of Procedure of the Legislative Assembly specify that in addition to Members of the Legislative Assembly, other persons who are not Members of Parliament may, where necessary, sit on Joint Special committees. In their capacity as advisers, they shall have the right to speak but not to vote.

Yet, there is no general rule on the establishment and functioning of these government groups and committees, meaning that there is no general provision indicating their functioning and optimal composition (e.g. who can be appointed as member of a government board and committee, appropriate qualification and conditions for appointment).

To help ensure equity and diversity in the advisory groups, Costa Rica could introduce general rules for the selection process of government boards and committees to ensure a balanced representation of interests in terms of private sector and civil society representatives (when relevant), as well as expertise from a variety of backgrounds. The rules can also guarantee that the selection process is inclusive, so that every potential expert has a real chance to participate, and transparent, so that the public can effectively scrutinise the selection of members of advisory groups.

Moreover, considering that members of advisory groups come from different backgrounds and may have different interests, it is fundamental to provide a common framework that allows all members to carry out their duties in the general interest. It is therefore necessary to adopt specific rules of procedures for such groups that include standards of conduct and, most importantly, procedures for preventing and managing conflicts of interest that should be adhered to by all those participating in providing advice to government.

Such measures would provide reasonable safeguards against special interest groups capturing or imparting biased advice to government.

For example, the Ministry of Local Government and Modernisation in Norway published guidelines on the use of independent advisory committees, which specify that the composition of such groups should reflect different interests, experiences and perspective. While the guidelines are not legally binding, they provide an example for Costa Rica on the selection process and the management of conflicts of interests within these groups (Box 4.9).

Box 4.9. Guidelines on the use of independent advisory committees in Norway

In 2019, the Norwegian Ministry of Local Government and Modernisation adopted guidelines entitled "Committee Work in the State. A guide for leaders, members and secretaries in government study committees". Regarding the composition of these committees, the document specifies that there needs to be a balanced composition of interests:

- "*If the committee is to help clarify issues that are subject to academic disagreement, it is important that the composition is not skewed from an academic standpoint*".
- "*If the goal of the committee, in addition to acquiring knowledge, is to agree on common goals and values, it is important that the composition reflects different interests, experiences and standpoints*".

Regarding conflicts of interest, the document warns that the work method and the effectiveness of the committee can be weakened by members who cannot comment on an independent basis and constantly need to clarify the assessments with the business or organisation to which they belong. As a result, the guidelines specifies that members should "explain any commitments that may involve conflicts of interests".

Source: (Ministry of Local Government and Modernisation of Norway, 2019[18]).

Costa Rica could strengthen transparency for government advisory or expert groups, including on what the outcomes are, how inputs have been dealt with and how they are incorporated in the resulting decision

Along with the composition of advisory or expert groups, a key challenge within OECD countries is the lack of transparency on the funding and functioning of these bodies, as well as the opacity of their outcomes. The draft lobbying bill discussed in Costa Rica proposed to exclude consultancy services provided to public bodies and members of Parliament by professionals and researchers from non-profit associations, corporations, foundations, universities, research centres and other similar entities. This included any verbal declaration or written information delivered by a professional linked to these entities before a parliamentary body, as well as any invitations issued by public officials to these professionals to participate in meetings of a technical nature directly related to matters within their competence (Article 6, paragraphs 5, 6 and 7 of the draft lobbying bill).

This, however, can be considered as a significant loophole and should be carefully considered in any upcoming discussions of a lobbying bill. The draft provisions could be revised and considered applicable provided that advisory groups and committees abide by specific transparency rules that allow for public scrutiny.

These rules could include mandatory transparency on the structure, mandate, composition and criteria for selection for all Costa Rican advisory groups and committees. In addition, and provided that confidential

information is protected and without delaying the work of these groups, the agendas, records of decisions and evidence gathered could also be published to enhance transparency and encourage better public scrutiny. The Transparency Code for working groups in Ireland may serve as an example for Costa Rica (Box 4.10). Without the existence of such rules, it is recommended that providing advice in any form to the government – including trough advisory and expert groups – is not excluded from potential lobbying regulations and be disclosed in lobbying registers.

Box 4.10. Transparency Code for working groups in Ireland

In Ireland, any working group set up by a minister or public service body that includes at least one designated public official and at least one person from outside the public service, and which reviews, assesses or analyses any issue of public policy with a view to reporting on it to the Minister of the Government or the public service body, must comply with a Transparency Code.

The following information must be published on the website of the public body on its establishment:

- Names of chairperson and members, with details of their employing organisation (if they are representing a group of stakeholders, this should be stated).
- Whether any members who are not public servants were formerly public officials.
- Terms of reference of the group.
- Expected timeframe for the group to conclude its work.
- Reporting arrangements.

In addition, the agenda and minutes of each meeting must be published and updated at least every four months. The chairperson must include with the final or annual report of the group a statement confirming its compliance with the Transparency Code. If the requirements of the Code are not adhered to, interactions within the group are considered to be a lobbying activity under the Regulation of Lobbying Act 2015.

Source: Department of Public Expenditure and Reform, Transparency Code prepared in accordance with Section 5 (7) of the Regulation of Lobbying Act 2015, https://www.lobbying.ie/media/5986/2015-08-06-transparency-code-eng.pdf

Establishing a public integrity framework adapted to the risks of lobbying and influence activities for public officials

To foster integrity when interacting with lobbyists, Costa Rica could develop specific principles, rules, standards and procedures for public officials

In addition to enhancing the transparency of the policy-making process, the strength and effectiveness of the process also rests on the integrity of both public officials and those who try to influence them (OECD, 2021[1]). Policy-making decisions remain the prerogative of policy makers, who are the guardians of the public interest and balance all considerations for adopting a policy in that light. The OECD Recommendation on Principles for Transparency and Integrity in Lobbying encourages governments to foster a culture of integrity in public organisations and decision making by providing clear rules, principles and guidelines of conduct for public officials (OECD, 2010[10]). Therefore, it is important to examine this wider ecosystem of integrity standards in the public sector and understand how they can curb undue influence.

The 2021 OECD Report on Lobbying found that although all countries have established legislation, policies and guidelines on public integrity, they have usually not been tailored to the specific risks of lobbying and other influence practices. In Costa Rica, there are different standards as well as general guidelines on public integrity for public officials (Chapter 1). The Law against Corruption and Illicit Enrichment in the Public Administration (Law 8422, LCCEI) and its regulations set the general rules related to the expected standards of conduct in the public sector. In Article 3, the law establishes probity as the primary obligation of a public official and that his actions should always be aimed at fulfilling the general interest. The 2004 Guideline D-2-2004 issued by the CGR lists the ethical principles governing the exercise of the public service. The Guideline applies to all public servants, including the decentralised public sector (institutional and territorial) and describes the obligation to ensure objectivity and impartiality, political neutrality and a set of duties and prohibitions related to the management of conflicts of interest

Specific provisions aiming at strengthening the resilience of decision-making processes to undue influence can also be found in various codes of ethics and manuals, such as the Civil Service Ethics Manual (*Manual de Ética de la Función Pública*). As seen in Chapter 3, these standards contain specific provisions on incompatibilities, managing conflicts of interest and the acceptance of gifts and benefits. Additionally, Article 3 of the LCCEI states that public employees have a duty of probity.

However, these laws and their related directives or codes of ethics do not include specific provisions addressing risks of lobbying and other influence practices, including on the proper use of confidential information, pre- and post-employment restrictions on lobbying and handling third party/lobbyists contacts.

To foster a culture of integrity in public organisations and decision making, the OECD Recommendation indicates that countries should provide standards to give public officials clear directions on how they are permitted to engage with lobbyists. Integrity standards and ethical obligations on lobbying may be included in a specific lobbying law or lobbying code of conduct or included in the general standards for public officials, such as laws or codes of conduct for public officials.

Depending on the type of document in which they are included, standards for public officials and their interactions with lobbyists may include:

- The duty to treat lobbyists equally by granting them fair and equitable access.
- The obligation to refuse meetings with unregistered lobbyists, or at a minimum to check that the lobbyist is registered or intends to register within the specified deadlines (if a mandatory lobbying register is in place).
- The obligation to refuse accepting gifts (fully or beyond a certain value).
- The obligation to report violations of lobbying-related rules (including rules on gifts) to competent authorities.
- The duty to publish information on their meetings with lobbyists (through a lobbying registry or open agendas).
- The duty to report gifts and benefits received, amongst others (addressed in the following section).

Given the current absence of these standards in the public sector in Costa Rica, the government could consider including standards and guidelines for public officials on their interactions with lobbyists and representatives of interest groups in the upcoming law on lobbying and/or in existing regulations, codes of ethics and manuals. The National Commission for Ethics and Values (*Comisión Nacional de Ética y Valores*, CNEV) could include the challenges related to lobbying more explicitly in the ethics management model, for example (Chapter 1). The proposed lobbying bill included some obligations for public officials and institutions, including the obligation for all lobbied public officials to maintain a balance in their treatment of persons, organisations and entities requesting hearings on the same subject matter" (Article 13 – *De la igualdad de trato*"). The bill also made it mandatory to denounce any violations by lobbyists. To further develop these provisions, the following standards implemented by other countries could serve as examples for Costa Rica (Table 4.3).

Table 4.3. Examples of specific standards for public officials on their interactions with lobbyists

	Document	Standards of conduct on lobbying
Australia	Australian Government Lobbying Code of Conduct	• A Government representative shall not knowingly and intentionally be a party to lobbying activities by a lobbyist or an employee of a lobbyist who is not on the Register of Lobbyists, or who has failed to inform them that they are lobbyists (whether they are registered, the name of their clients, and the nature of the matters they wish to raise). • A Government representative must report any breaches of the Code to the Secretary of the Attorney General's Department.
Canada	Prime Minister's Guide on Open and Accountable Government (for ministers and ministers of state)	• (IV.3) The Commissioner of Lobbying may ask designated public office holders, including Ministers and Parliamentary Secretaries, to verify information about lobbying communications that has been registered by lobbyists. Every effort should be made to meet this responsibility using routine records.
Chile	Law regulating lobbying and the representation of private interests before authorities and civil servants.	• Lobbied public officials and administrations have a duty to register hearings and meetings with lobbyists, as well as donations and trips made in the exercise of their duties. • Public administrations have a duty to maintain a public register of lobbyists and interest representatives. • They must guarantee equal access for persons and organisations to the decision-making process. Public administrations are not required to respond positively to every demand for meetings or hearings; however, if it does so in respect to a specific matter, it must accept demands of meetings of hearings to all who request them on the said matter.
Iceland	Code of Conduct for Staff in the Government Offices of Iceland	• When interacting with interest groups, staff in the Government Offices of Iceland shall bear in mind that the duties of public administration are primarily towards the public. Staff shall observe the principle of equality when responding to the requests of interest groups.
Latvia	Cabinet Regulations No. 1 Values of State Administration and Fundamental Principles of Ethics	• When communicating with lobbyists, public employees shall follow the principles of openness, equality, and integrity. They must ensure all interested lobbyists have equal opportunities to receive information and communicate with the public institution and its employees. • Public employees must inform their direct manager or the head of their institution on their meeting with lobbyists, and disclose information on their meetings, including information received from lobbyists.
Lithuania	Law on Lobbying Activities	• State and municipal bodies, as well as lobbied public officials must create the conditions for lobbyists to exercise their rights specified in the law when they are registered, to carry out lawful activities and pursue the interests of lobbying clients and beneficiaries, as well as the conditions for the Chief Official Ethics Commission to carry out its supervising functions. • Lobbied persons are prohibited from accepting gifts or any other remuneration from lobbyists. • The President of the Republic, the Seimas, members of the Government, Deputy Ministers, Governors, Chancellors of Ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies must declare lobbying activities targeting them for each draft legal act, no later than seven days from the start of lobbying activities for the specific draft act (…). • Civil servants who participate in the preparation, consideration and adoption of draft legal acts must declare lobbying activities targeting them for each draft legal act to their managers or authorised representatives of the public institution that employ them, no later than seven days from the start of lobbying activities for the specific draft act (…). • The President of the Republic, members of the Seimas, the Government, Deputy Ministers, Chancellors of the Seimas, the Government, Ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies shall make their agendas public. Their agendas shall be published on the websites of the legal entities in which they hold office.
Slovenia	Integrity and Prevention of Corruption Act	• Public officials may agree to have contact with a lobbyist only after verifying that the lobbyist is entered into the Register. If, during a contact with a lobbyist a conflict of interest arises on the part of the person lobbied, they must refuse any contact with the lobbyist. • They must record, within three days, of each meeting with a lobbyist to their superior and to the Commission for the Prevention of Corruption. • They must report, within ten days, any attempts to lobby from unregistered lobbyists to the Commission for the Prevention of Corruption.

Source: (OECD, 2021[1]).

Additionally, general integrity standards for public officials can be adapted to sectors or functions in the executive and legislative branches and to higher and more politically exposed positions (OECD, 2021[1]). For instance, elected or appointed political officials such as members of parliament, ministers, and political advisors are central in the public decision-making process. In this sense, setting higher expectations to serve the public interest for politically exposed positions may be necessary to effectively address risks of lobbying and other influence activities.

Costa Rica could therefore include specific provisions on lobbying in existing integrity standards for politically exposed persons, for example the Code of Conduct of the Legislative Assembly. In Malta, aware of the weaknesses of the current codes of ethics of Members of the House of Representatives and ministers and parliamentary secretaries, the Commissioner for Standards in Public Life carried out a revision of such codes of ethics and developed additional guidelines, as a separate exercise in terms of the Standards in Public Life Act. The revised versions of the codes of ethics introduce several provisions on the interactions with third parties including on the acceptance and registration of gifts, the misuse of public resources and confidential information, and management of conflicts of interest. The specific provisions are seen in Box 4.11.

Box 4.11. Provisions on lobbying included in the revision of the codes of ethics of Malta and additional guidelines

Revision of the Code of Ethics of Members of the House of Representatives and additional guidelines

- To establish a Register for Gifts, Benefits and Hospitality in which MPs should duly record not only those received but also those bestowed by them (or their family members) to third parties, if such gifts are related to their parliamentary or political activities and have a value of over EUR 250.
- To establish a Register of Interests for the registration of financial and nonfinancial interests in compliance with the accompanying guidelines; spouses and/or partners as well as other members of MPs' families shall be subject to registration of certain interests.
- MPs who have any interest which is in conflict with the proper exercise of their duties in any proceedings of the House or its committees shall declare that interest in the House at the first opportunity before a vote is taken.

Revision of the Code of Ethics of Ministers and Parliamentary Secretaries and additional guidelines

- To establish a Transparency Register in which ministers are required to record all relevant communications with lobbyists within seven days.
- To establish a Register for Gifts, Benefits and Hospitality in which ministers should duly record not only those received but also those bestowed by them (or their family members) to third parties, if such gifts exceed the threshold of EUR 250.
- To establish a Register of Interests for the registration of financial and nonfinancial interests in compliance with the accompanying guidelines.
- Ministers are required to avoid associating with individuals who could place them under any obligation or inappropriate influence.
- Ministers are required to avoid putting themselves in situations in their private lives that may expose them to any undue pressure or influence, and if they find themselves in such a situation they are required to resolve it immediately in a truthful and open manner.
- If Ministers hold meetings with persons who have an interest in obtaining permits, authorisations, concessions and other benefits from the state, they should do so in an official

setting in the presence of officials, unless this is impractical on account of justifiable circumstances.

- Ministers shall not conduct official business through unofficial email accounts

Source: OECD (forthcoming), *Improving transparency and integrity in lobbying in Malta: Recommendations for introducing a lobbying framework.*

To strengthen post- and pre- public employment rules, Costa Rica could impose additional restrictions on involvement in lobbying for certain public officials for a specified period of time after they cease to hold office

As emphasised in Chapter 3, some of the main risks and concerns related to influence is the revolving door phenomenon. Several OECD countries have established provisions to temporarily restrict former public officials from lobbying their past organisations and imposing similar temporary cooling-off period restrictions on appointing or hiring a lobbyist to fill a regulatory or an advisory post in government (Box 4.12). In addition to the recommendations already made in Chapter 3 on general cooling-off periods, Costa Rica could therefore introduce specific cooling-off periods on lobbying activities.

Box 4.12. Examples of provisions on lobbying cooling-off periods for elected officials and appointed officials in at-risk positions in OECD counties

In **Australia**, Ministers and Parliamentary Secretaries cannot, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings within their last 18 months in office. Additionally, persons employed in the Offices of Ministers or Parliamentary Secretaries at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

In **Canada**, during the five-year period after they cease to hold office, former designated public office holders are prohibited from engaging in any consultant lobbying activities. Similarly, former designated public office holders who are employed by an organisation are also prohibited from engaging in any in-house lobbying activities for this same five-year period.

In the **Netherlands**, a circular adopted in October 2020 – "Lobbying ban on former ministries" – prohibits ministers and any officials employed in ministries to take up employment as lobbyists, mediators or intermediaries in business contacts with a ministry representing a policy area for which they previously had public responsibilities. The length of the lobbying ban is two years. The objective of the ban is to prevent retiring or resigning ministers from using their position, and the knowledge and network they acquired in public office, to benefit an organisation employing them after their resignation. The secretary general of the relevant ministry has the option of granting a reasoned request to former ministers who request an exception to the lobbying ban.

Source: (OECD, 2021[1]).

Costa Rica could develop guidance to help public officials assess the reliability of information used in policy- and decision-making

In their interactions with public officials, lobbyists share their expertise, legitimate needs and evidence about policy problems and how to address them (OECD, 2021[1]). Although this exchange provides public officials with valuable information on which to base their decisions, lobbyists may sometimes abuse this legitimate process to provide unreliable or inaccurate information to advance their own private interest. Additionally, lobbyists may also indirectly influence policy- and decision-making by supporting and promoting studies that challenge scientific arguments unfavourable to their interests, or highlighting the results of studies financed by their own research centres, institutes and other organisations that are favourable to their interests.

To that end, Costa Rica could consider providing guidelines for public officials to help them become aware of the possibility of being indirectly influenced through biased or false evidence, and the need to assess the credibility of sources provided by third parties and used in policy- and decision-making. Some governments have started to provide concrete standards for public officials in assessing evidence provided by third parties, including the Netherlands (Box 4.13).

Box 4.13. The Dutch Code of Conduct reminds public officials to consider indirect influence

The Dutch Code of Conduct on Integrity in Central Government reminds public officials to consider indirect ways they may be influenced by special interest groups, for example, by financing research.

> *"You may have to deal with lobbyists in your work. These are advocates who try to influence decision making to their advantage. That is allowed. But are you always aware of that? And how do you deal with it? Make sure you can do your work transparently and independently. Be aware of the interests of lobbyists and of the different possibilities of influence. This can be done very directly (for example by a visit or invitation), but also more indirectly (for example by co-financing research that influences policy). Consult with your colleagues or supervisor where these situations may be present in your work. Sometimes it is in the public interest to avoid contacts with lobbyists."*

Source: (OECD, 2021[1]).

Costa Rica could develop and provide additional guidance and increase capacity building and awareness raising activities on lobbying and other influence activities

Having clear principles, rules, standards and procedures for public officials on their interactions with lobbyists is key, but it is not sufficient to mitigate the integrity risks of lobbying and other influence activities. Raising awareness of the expected rules and standards as well as enhancing skills and understanding of how to apply them are also essential elements to foster integrity in lobbying. Likewise, well-designed guidance, advice and counselling serve to provide clarity and practical examples, facilitate compliance and help avoid the risk of misinterpreting rules and standards (OECD, 2021[1]).

Most countries with lobbying transparency frameworks do provide guidance, build capacity and raise awareness of integrity standards and values for public officials (OECD, 2021[1]). This may include induction or on-the-job training, disseminating the code of conduct and issuing posters, computer screen-savers, employee boards, banners, bookmarks and printed calendars (OECD, 2021[1]). Training offered by public authorities commonly include guidelines on values and standards, expected behaviour, and concrete examples of good practices, ethical dilemmas and descriptions of potentially problematic situations. Countries where public authorities offer training on interactions with lobbyists include Canada, France, Hungary, Ireland, Lithuania, Slovenia and the United Kingdom.

To that end, any subsequent law on lobbying in Costa Rica could specify that the oversight body has the mandate to develop guidance, capacity building and awareness raising activities on lobbying and other influence activities to help build the knowledge, skills and capacity to manage the integrity issues arising. Training activities could include examples of good practices and ethical dilemmas, with the aim of allowing public officials, through interactive and situational methods, to reflect on key dilemmas and on the consequences of breaching integrity standards.

Costa Rica could also consider strengthening its advisory role on lobbying by providing advice on implementation of the lobbying regulation and to help public officials understand the rules and ethical principles of the civil service in combating undue influence. For instance, in France, the High Authority for Transparency in Public Life provides individual confidential advice upon request to the highest-ranking elected and non-elected public officials falling within its scope and provides guidance and support to their institution when one of these public officials requests it, within 30 days of receiving the request (OECD, 2021[1]).

Establishing a public integrity framework adapted to the risks of lobbying and influence activities for lobbyists

Costa Rica could consider developing and adopting standards of conduct which would apply to all lobbyists

The strength and effectiveness of the policy-making process depends not only on the integrity of public officials but also on the integrity of those who try to influence them. Indeed, companies and lobbyists are critical actors in the policy-making process, providing government with insights, evidence and data to help them make informed decisions. However, they can also at times undermine the policy-making process by abusing legitimate means of influence, such as lobbying, political financing and other activities (OECD, 2021[1]). To ensure integrity in the policy-making process, lobbyists (whether in-house or as part of a lobbying association) require clear standards and guidelines that clarify the expected rules and behaviour for engaging with public officials.

The OECD Recommendation on Principles for Transparency and Integrity in Lobbying states that lobbyists should comply with standards of professionalism and transparency in their relations with public officials (OECD, 2010[10]). Costa Rica could increase the accountability and responsibility of the private sector and lobbyists for their activities in two ways. First, upcoming draft laws could include explicit obligations for lobbyists clarifying their essential role in providing information which public entities will be then obliged to register and eventually publish on-line.

This was already the case in the draft law regulating lobbying activities proposed in 2019, which foresaw the following duties for lobbyists:

- The obligation for lobbyists to provide in a timely and truthful manner to the respective authorities and officials the information provided by the law when requesting a hearing or a meeting. Omitting to disclose such information or providing inaccurate information can lead to sanctions (Article 9 and Article 17).
- The obligation to inform the request public official or institutions the names of the natural and legal person they represent, if applicable (Article 9).
- The obligation for lobbyists to inform the public officials of their status to during their meetings with them (Article 9).
- The possibility to file a complaint to lobbied institutions or persons in the event that the official designated by them to register the information by lobbyists in the Public Agenda Register is not registered accordingly (Article 17).

Such obligations do not necessarily require the creation of an additional register, where lobbyists would have to disclose information. Rather, they enable to share the responsibility of having accurate and updated information in the Public Agenda Register. In this sense, the draft law followed the example of Chile, whose lobbying law provides for a number of disclosure obligations for lobbyists as well as for sanctions in case they are not complied with.

Second, codes of conduct are the chief support of integrity in the lobbying process and can further detail obligations set out in the law. Box 4.14 provides examples of codes of conduct for lobbyists in other jurisdictions.

Box 4.14. Codes of conduct for lobbyist

City of Ottawa, Canada

The City of Ottawa introduced a 2012 Lobbyist Code of Conduct and a Lobbyist Registry. According to the Code of Conduct, lobbyists are expected to comply with standards of behaviour and conduct in the following matters: 1. Honesty, 2. Openness, 3. Disclosure and identity purpose, 4. Information and confidentiality, 5. Competing interests and 6. Improper influence. For instance, under the topic 3. Disclosure and identity purpose, lobbyists are expected to "register the subject matter of all communication with public office holders that constitutes lobbying under the Lobbyist Registry"

Ireland

The Standards in Public Office Commission issued a Code of Conduct for persons carrying out lobbying activities, which came into effect on 1 January 2019. The Code sets out several principles by which persons carrying on lobbying activities should govern themselves in the course of carrying out lobbying activities, namely: 1. Demonstrating respect for public bodies, 2. Acting with honesty and integrity, 3. Ensuring accuracy of information, 4. Disclosure of identity and purpose of lobbying activities to public bodies and elected or appointed officials, 5. Preserving confidentiality, 6. Avoiding improper influence, 7. Observing the provisions of the Regulation of Lobbying Act, and 8. Having regard for the Code of Conduct).

Source: OECD (forthcoming), *Improving transparency and integrity in lobbying in Malta: Recommendations for introducing a lobbying framework.*

Lastly, countries with a specific framework on lobbying and rules on the acceptance of gifts, benefits and other advantages may impose specific conditions and/or restrictions on such activities by lobbyists. This is the case, for example, in the United States. The ethical rules of the U.S House of Representatives impose stricter rules on gifts and travel offered by a registered lobbyist (Box 4.15).

Box 4.15. . US House of Representatives' rules prohibiting gifts and travel from lobbyists

The US House of Representatives Ethics Manual explicitly prohibits gifts offered by lobbyists. A Member, officer or employee of the House of Representatives may not accept any gift from a registered lobbyist, agent or a foreign principal, or a private entity that retains or employs such individuals.

Other gifts that are expressly prohibited include:

- Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, officer or employee of the House.
- Charitable contributions made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation or other specification of a Member, officer or employee of the House.
- A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, officer or employee.
- A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat or similar event, sponsored by or affiliated with an official congressional organisation, for or on behalf of Members, officers or employees of the House.

Members, officers and employees may accept virtually any gift below USD 50 from other sources, with a limitation of less than USD 100 in gifts from any single source in a calendar year. Invitations to travel, both in their official and personal capacities, are considered as gifts to Members, officers and employees, and are thus subject to the same prohibitions as other gifts.

Source: (OECD, 2021[1]).

Costa Rica could provide incentives for responsible engagement from the private sector

Additionally, considering that lobbyists and companies are under increasing scrutiny, they need a clear integrity framework for engaging with the policy-making process in a way that does not raise concerns over integrity and inclusiveness (OECD, 2021[1]). Indeed, large institutional investors are becoming increasingly aware of the financial and non-financial risk of malpractice and are facing more pressure. As a result, risk and crisis management has become more dominant and the demand for transparency has increased.

Costa Rica could promote responsible engagement and self-regulation from the private sector. To do so, Costa Rica could encourage companies and organisations to formalise responsible engagement standards and internal processes that address the full scope of corporate and trade association conduct in the policy-making process to reassure the public and institutional investors that lobbying is done professionally and with high standards. Standards could cover issues such as ensuring accuracy and plurality of views, promoting transparency in the funding of research organisations and think tanks, managing and preventing conflict of interest in the research process and ensuring that staff assigned to conduct lobbying activities have a good understanding of transparent, responsible and thus professional interaction. These standards could also specify voluntary disclosures that may involve social responsibility considerations regarding a company's involvement in public policy-making and lobbying (Box 4.16).

Box 4.16. Responsible corporate engagement standards and due diligence requirements on lobbying and trade association alignment for

- Explaining how lobbying and influence activities align with public commitments to support goals on climate change and other shared sustainability challenges.
- Establishing adequate due diligence measures to ensure that the positions and practices of those who lobby on a company's behalf (industry and lobby associations) do not run afoul of the organisation's values and commitments. This may include:
  - Processes to regularly review membership of trade associations and third-party organisations and identify misalignment.
  - Transparency on memberships of trade associations or other third-party organisations that may engage in political activities (charities, foundations, PACs, fundraising organisations).
  - The level of funding and engagement in these organisations (e.g. representation on the board, funding beyond membership, participation in specific committees or working groups).
  - Actions taken when the positions and lobbying practices of these organisations do not align with the company's own lobbying practices and commitments.
- Mainstreaming these standards across all business lines – including government affairs and sustainability functions to create a coherent position across the company's government affairs activities and CSR/ESG branches. These policies should ensure that CSR/ESG teams have sufficient access to information on a company's lobbying activities and trade association membership.
- Adopting transparency and integrity measures on the hiring of former public officials.
- Specifying the role of board members, top management and senior executives in regularly monitoring the implementation of the standards.
- Ensuring that employees have the knowledge and capacity to implement the standards in their daily work.

Source: (OECD, 2022[15]).

Ensuring that government decision-making processes are inclusive through effective stakeholder engagement

Costa Rica could formalise tools for stakeholder engagement and participation and promote awareness among citizens of their existence

Ensuring the access of all stakeholders to inform and shape public policies is key to achieving better policies. It implies that policy makers will be better informed to legislate and that most interests will be included and represented in policy outcomes. There are several ways to allow for stakeholders' participation (Box 4.17).

Box 4.17. Types of stakeholder participation

Stakeholder participation, as defined by the OECD Recommendation of the Council on Open Government, refers to all the ways in which stakeholders can be involved in the policy cycle as well as in service design and delivery, including information, consultation and engagement.

Information: an initial level of participation characterised by a one-way relationship in which the government produces and delivers information to stakeholders. It covers both on-demand provision of information and "proactive" measures by the government to disseminate information.

Consultation: a more advanced level of participation that entails a two-way relationship in which stakeholders provide feedback to the government and vice-versa. It is based on the prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on the outcomes of the process.

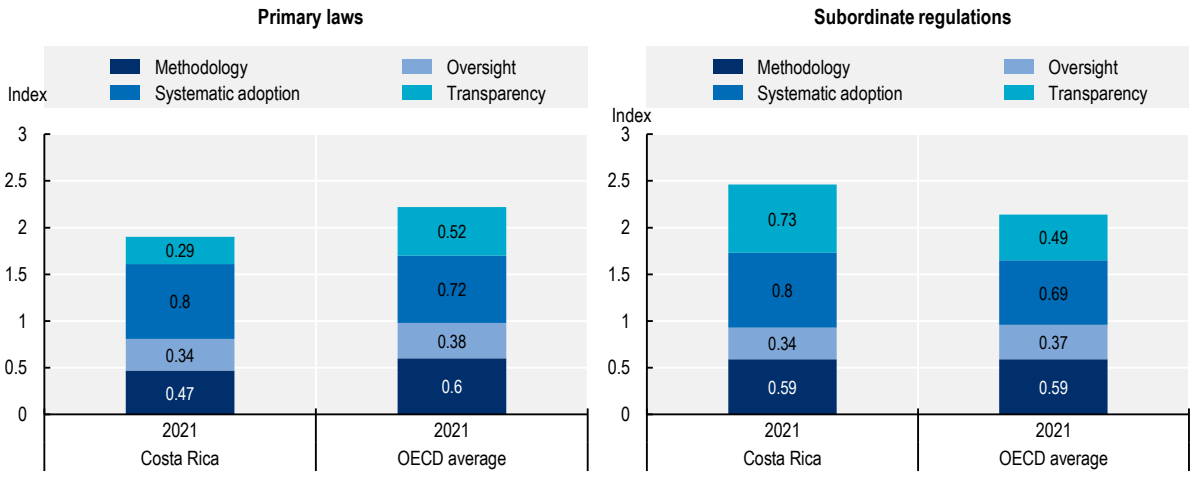
Engagement: when stakeholders are given the opportunity and the necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy-cycle and in the service design and delivery.

Source: (OECD, 2017[19]).

In Costa Rica, citizen participation is enshrined in Article 9 of the Constitution, which was amended by Law 8364 from 2003 and now states that "the Government of the Republic is popular, representative, *participatory*, alternative and responsible (…)". In addition, Costa Rica has several laws that touch on the participation of citizens and key stakeholders in the policy cycle. For example, Law 5338 on Foundations (*Ley de Fundaciones*) regulates how civil society organisations should function. Formal citizen participation mechanisms are also protected by law (Law 8491 on Popular Initiative, *Ley de Iniciativa Popular*, and Law 8492 Regulating the Referendum, *Ley de Regulación del Referéndum*). Law 9097 on Regulating the Right of Petition (*Ley de Regulación del Derecho de Petición*) sets forth that any citizen may exercise the right of petition, without prejudice or penalty, before any public institution, administration or authority, on any subject, matter or information of public concern.

Costa Rica has introduced several changes to expand stakeholder engagement in the development of regulations (Figure 4.7), such as forward planning and a more intensive use of the Preliminary Control System (*Sistema de Control Previo*, SICOPRE). SICOPRE is a centralised webpage that makes regulatory impact assessments (RIAs) and public consultations available and allows for comments by the public, to which regulators respond (OECD, 2021[20]). The government has also made efforts to identify the needs of specific groups of society such as indigenous communities and involve them in the policy process. In addition, the Legislative Assembly has a Department of Citizen Participation (*Departamento de Participación Ciudadana*, DPC) whose functions are defined in the "Manual of functions and structure of the technical-administrative organisation of the Legislative Assembly", published in the Legislative Portal. This body is in charge of channelling initiatives proposed by citizens, informing and training on the different legislative processes and generating spaces for dialogue, co-creation and accountability.

Figure 4.7. Stakeholder consultation at different stages of policy making



Note: The more regulatory practices as advocated in the OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its iREG score. The indicators on stakeholder engagement for primary laws only cover those initiated by the executive (17% of all primary laws in Costa Rica)
Source: Indicators of Regulatory Policy and Governance (iREG): Costa Rica, 2021, oe.cd/ireg

StatLink https://stat.link/ag1fj6

However, Costa Rica still lacks a law or formalised mechanisms on citizen participation that regulate and standardises citizen participation in the drafting and application of laws and public policies. Looking ahead, and in line with previous recommendations made by the OECD during the accession process, Costa Rica would benefit from adopting the adoption a law on citizen participation that would facilitate the expansion of the practice to all public institutions, at all levels of government (OECD, 2021[21]).

To improve compliance and the perception of lobbying among citizens, Costa Rica could further promote stakeholder participation in the discussion, implementation and revision of lobbying-related regulations and standards of conduct

One of the main challenges that emerged during the interviews conducted in Costa Rica is the limited – and often negative – understanding of the concept of lobbying and of the benefits of making it a transparent process, including to ensure fair and equitable access to the decision-making process and to enable public scrutiny. As such, the government of Costa Rica could further work with stakeholders and citizens to communicate and involve them not only throughout the drafting process, but also in its implementation and revision. Following the example of Ireland and Canada (Box 4.18), this could include education and awareness raising campaigns addressing the negative perception of lobbying through information material and social media, as well as consultations on the content of regulations and lobbying standards of conduct.

Box 4.18. Consultations on in the drafting and revision processes of lobbying regulations in Ireland and Canada

Supporting a cultural shift towards the regulation of lobbying in Ireland through public consultation

In Ireland, the Standards in Public Office Commission established an advisory group of stakeholders in both the public and private sectors to help ensure effective planning and implementation of the Regulation of Lobbying Act. This forum has served to inform communications, information products and the development of the online registry itself.

The Commission also developed a communications and outreach strategy to raise awareness and understanding of the regime. It developed and published guidelines and information resources on the website to make sure the system is understood. These materials include an information leaflet, general guidelines on the Act and guidelines specific to designated public officials and elected officials.

The Commission launched a more targeted outreach campaign through letter mail, and issued a letter and information leaflet to over 2 000 bodies identified as potentially carrying out lobbying activities.

The website was developed to contain helpful information on how to determine whether an activity constitutes lobbying for the purposes of the Act. (Three Step Test: www.lobbying.ie/help-resources/information-for-lobbyists/am-i-lobbying/) Instructional videos were added to the site as well (www.youtube.com/watch?v=cLZ7nwTI5rM).

Consultation on future changes to the Lobbyists' Code of Conduct in Canada

In Canada, the Office of the Commissioner of Lobbying launched a series of consultations in 2021 and 2022 to collect views on improving and clarifying the standards of conduct for lobbyists to update the *Lobbyists' Code of Conduct*.

An initial consultation was held in late 2020 to obtain the views and perspectives of stakeholders in relation to the existing *Lobbyists' Code of Conduct*. A second consultation (Dec. 15, 2021 to Feb. 18, 2022) aimed to collect views on a preliminary draft of the revised Code. A final and third consultation on changes to the Code takes into consideration comments received from the previous consultation is currently ongoing (until 22 June 2022).

Source: Ireland: Lobbying.ie, www.lobbying.ie/; Canada: Office of the Commissioner of Lobbying, Consultation on future changes to the Lobbyists' Code of Conduct, https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/lobbyists-code-of-conduct/consultation-on-future-changes-to-the-lobbyists-code-of-conduct.

Proposals for actions

The recommendations provided in this chapter are an input on how Costa Rica could strengthen transparency and integrity in its policy-making processes. As such, these proposals may inform on-going discussions on the adoption of a lobbying framework and help strengthen integrity standards for public officials.

First, Costa Rica should consider taking steps to strengthen transparency in government decision-making by:

- Consolidating the existing framework for access to information into a single Act.
- Adopting a lobbying framework ensuring transparency of any kind of lobbying activities that may take place in practice.
- Strengthening transparency in election processes by specifying contribution and spending limits, as well as restrictions on online media advertisement.
- Enabling interoperability of the newly implemented beneficial ownership register with future lobbying registers to strengthen transparency and scrutiny on who is ultimately benefitting from a lobbying activity.

Second, Costa Rica could establish transparency and integrity frameworks for all persons and bodies providing advice to government by:

- Adopting binding rules for the selection process of advisory or expert groups.
- Strengthening transparency into interests advising government advisory or expert groups, including what the outcomes are, how they have been dealt with and how they are incorporated in the resulting decision.

Third, Costa Rica should consider establishing a public integrity framework adapted to the risk of lobbying and influence activities for both public officials and lobbyists by:

- Developing specific principles, rules, standards and procedures for public officials when interacting with lobbyists.
- Strengthening post-public employment rules by imposing additional restrictions on involvement in lobbying for certain public officials for a specified period of time after they cease to hold office.
- Adopting standards of conduct which would apply to all lobbyists.
- Developing guidance to help public officials assess the reliability of information used in policy and decision making.
- Developing and providing additional guidance and increasing capacity-building and awareness-raising activities on lobbying and other influence activities for public officials.
- Developing additional guidance and incentives for responsible engagement from the private sector.

Lastly, Costa Rica should ensure that government decision-making processes are inclusive through effective stakeholder engagement by:

- Formalising tools for stakeholder engagement and participation, as well as their awareness among citizens.
- Promoting stakeholder participation in the discussion, implementation and revision of lobbying-related regulations and standards of conduct in order to improve compliance and the perception of lobbying among citizens.

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5 Towards a coherent disciplinary system in Costa Rica

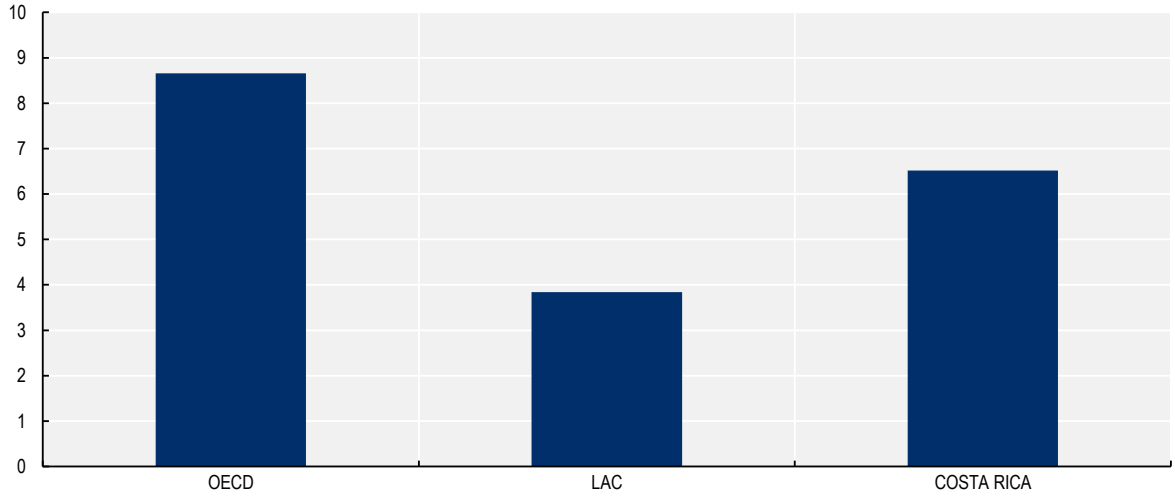
This chapter analyses the disciplinary enforcement mechanisms applicable in the Costa Rican public sector. In particular, the chapter focuses on the coherence of the institutional and legal framework, harmonisation of disciplinary processes and improved institutional co-ordination. Although recent efforts attempt at addressing these issues, further policy reforms are required to improve the quality of disciplinary processes and ensure fairness through the uniform application of rules. The chapter provides recommendations for developing a set of common disciplinary rules for public officials, providing central guidance on their effective implementation and assigning disciplinary responsibilities to specific agencies and functions within entities.

Introduction

A coherent and comprehensive public integrity system requires enforcement mechanisms to be credible and effective and avoid impunity that could undermine the rule of law, trust in institutions and could provide the breeding ground for more unethical practices, apathy, and cynicism. Enforcement mechanisms are the necessary "teeth" and the formal means by which societies can ensure compliance and deter misconduct. Therefore, the OECD Recommendation on Public Integrity calls on adherents to ensure that enforcement mechanisms provide appropriate responses to all suspected violations of public integrity standards by public officials and all others involved in the violations (OECD, 2017[1]).

When examining the adequacy of enforcement mechanisms in promoting trust in the public integrity system as a whole, a key element to consider are the levels of perceived judicial independence. In Costa Rica, the judiciary is independent and the courts are widely trusted by citizens and the private sector (Bertelsmann Stiftung, 2022[2]). The indicator for perceived Judicial Independence, as measured by the Index of Public Integrity, based on data from the World Economic Forum, shows that Costa Rica scores above the average of Latin American countries with available data, but below the OECD average (Figure 5.1). Compared to other countries in Latin America, according to Transparency International Global Corruption Barometer 2019, a majority of citizens (66%) also do not perceive judges and magistrates as corrupt. As far as formal guarantees of independence are concerned, due process rights are established in all criminal, administrative and civil processes by Articles 39 and 41 of the Constitution, as recognised by the Constitutional Chamber in resolutions numbers 15-1990 and 1739-92.

Figure 5.1. Perceived judicial Independence in Costa Rica, compared to OECD and Latin American average, 2021



Source: Mungiu-Pippidi, Alina, Ramin Dadasov, Roberto Martínez B. Kukutschka, Natalia Alvarado, Victoria Dykes, Niklas Kossow, and Aram Khaghaghordyan. 2021. *Index of Public Integrity*, European Research Centre for Anti-Corruption and State-Building (ERCAS).

This chapter focuses on the current disciplinary proceedings in Costa Rica. Disciplinary enforcement is grounded on the employment relationship with the public administration and the specific obligations and duties coming along with it. Breaching these obligations and duties leads to sanctions of an administrative nature, such as warnings or reprimands, suspensions, fines or dismissals. Disciplinary enforcement mechanisms help public administrations ensure effective accountability. They demonstrate that accountable institutions are liable for their decisions and actions and provide for a fair solution in cases of culpable breach of duty of their employees. Moreover, disciplinary sanctions communicates and reassures the validity of the norm. As a result, if carried out in a fair, co-ordinated, transparent and timely manner, disciplinary enforcement mechanisms can promote confidence in the government's public integrity system, serving to strengthen its democratic legitimacy in relation to citizens' expectations (OECD, 2016[3]; OECD, 2020[4]).

Overall, disciplinary enforcement plays an essential role within public integrity systems: it informs public officials' daily work and activities more directly. In addition, the information generated by disciplinary systems have the potential to identify integrity risk areas where preventive efforts and mitigation measures are needed (OECD, 2020[4]).

Therefore, this chapter analyses in particular:

- The extent to which integrity rules in Costa Rica are applied fairly, objectively and timely to all public officials.
- The existence and effectiveness of mechanisms aimed at promoting co-operation and exchange of information between the relevant bodies, units and officials at the organisational, subnational and national level to avoid overlap and gaps.
- How the disciplinary system in Costa Rica encourages transparency in relation to the effectiveness of the enforcement mechanisms and the outcomes of cases, in particular through developing relevant statistical data on cases.
- Applying fairness, objectivity and timeliness in the enforcement of public integrity standards in the public administration.

Costa Rica's framework for disciplinary sanctions is currently fragmented and does not cover the legislative branch

In Costa Rica, the General Law of Public Administration (Law 6227 of 1978, *Ley General de la Administración Pública*, LGAP) applies to all Costa Rican public institutions (323 as of March 2021). However, the LGAP, in article 367 excluded in matters of procedure what concerns personnel regulated by law or by autonomous work regulations. As a consequence, Costa Rica has a large number of specific institutional regulations with partial coverage (Box 5.1, see Figure 1.3 in Chapter 1 for an overview of the organisation of the Costa Rican public sector).

Box 5.1. Disciplinary frameworks in Costa Rica

Beyond the General Law of Public Administration (Law 6227, *Ley General de la Administración Pública*, LGAP), there are several regulations applying to specific areas of the Costa Rican public sector.

- The Central Administration of the Costa Rican executive is regulated by the Civil Service Statute (Law 1581 of 1993, *Estatuto de Servicio Civil*) and establishes duties, obligations, disciplinary sanctions and special summary procedures. These are complemented by autonomous regulations of single Ministries, which govern the sanctioning procedures in greater detail. The Civil Service Statute applies only to public servants of the central administration's executive branch paid by the public treasury and nominated by formal agreement published in the Official Gazette. Articles 3 and 4 exclude elected and appointed public officials, covering officials and employees who serve in positions of personal trust of the President or the Ministers, such as heads of diplomatic missions, the Attorney General, Provincial Governors, senior officials and ministry directors.
- Public officials in the Foreign Service are regulated by Law 3530 (Foreign Service Statute - *Estatuto del Servicio Exterior de la República*).
- The Police is regulated by Law 7410 (General Police Law - *Ley General de Policía*).
- The territorially decentralised public administration (*Administración Decentralizada Territorial*), referring to municipalities, is regulated by Law 7794 (the Municipal Code). In addition, all 83 municipalities have their own Autonomous Service Regulations.
- The institutionally decentralised public administration (*Administración Decentralizada Institucional*) does not have any regulation covering the 121 institutions and their 17 attached bodies. They have their own instruments for investigating, substantiating, and sanctioning misconduct, usually established in organic laws and Autonomous Service Regulations.
- Finally, Law 2 (Labour Code, *Código de Trabajo*) applies to State owned and Non-State owned Public Enterprises.

Source: Information provided by Costa Rica through the OECD questionnaire.

Outside the public administration, the legislative, judiciary and the electoral bodies are covered by specific Laws:

- The judiciary is covered by the Organic Law of the Judiciary (Law 7333, *Ley Orgánica del Poder Judicial*).
- Public officials of the Legislative Branch are regulated by Law 4556 (Law on the Personnel of the Legislative Assembly, *Ley de Personal de la Asamblea Legislativa*). This Law does not apply to elected officials, however.
- In the case of the Supreme Electoral Tribunal, in addition to Law 3504 (*Ley Orgánica del Tribunal Supremo de Elecciones TSE y del Registro Civil*, Organic Law of the Supreme Electoral Tribunal), the personnel is regulated by the Autonomous Regulation of Services of the Supreme Electoral Tribunal, based on Law 6227.

In addition to the LGAP and these specific regulations, there are other relevant Laws that cover the entire public sector: Law 7494 (Law on Administrative Contracting, *Ley de Contratación Administrativa*), Law 8131 (Law on Financial Administration of the Republic and Public Budgets, *Ley de la Administración Financiera de la República y Presupuestos Públicos*), Law 8292 (General Law of Internal Control, *Ley General de Control Interno*) and the Law against Corruption and Illicit Enrichment in the Public Function (Law 8422, *Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*, LCCEI). These laws, together with the LGAP, are considered key instruments for the investigation, substantiation and sanctioning within their respective scopes. They cover all 326 public entities of the Costa Rican public sector, which must take them into account when developing their own procedures.

In particular, the LCCEI and its regulation (Decree 32333-MP-J of 12 April 2005) provide for additional violations, whose administrative sanctions are imposed by each public entity usually through their human resources or legal services. The *de jure* coverage of the LCCEI, just as the LGAP, is broad and aligned with Article 1 of the United Nations Convention against Corruption. The definition of public officials also includes elected and appointed public officials as well as any type of service or relationship or contact with the exercise of public functions.

Recently, Costa Rica has adopted a Law on Public Employment (Law 10159, *Ley Marco de Empleo Público,* LMEP), which aims to unify the public service regime applicable to all public officials in Costa Rica, including from autonomous and decentralised administration. The LMEP establishes the Ministry of National Planning and Economic Policy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN) as the leading entity for public employment and the Law enters into force on 10 March 2023. The scope of the law is broad and touches upon many issues related to the harmonisation of the Costa Rican civil service.

Amongst other reforms, the LMEP partially replaces the disciplinary processes established in the Civil Service Statute and defines in Article 21 a new set of rules on proceedings for disciplinary dismissal (Table 5.1). Nevertheless, these do not apply to the legislative and the judiciary, the electoral body and the autonomous entities. These autonomous entities can issue their own internal regulations or, if not existent, the following ones will apply: LGAP (Law 6227), public law rules and principles, the Labour Code and the Civil Procedure Code (*Código Procesal Civil*).

Appeals against sanctions others than dismissal can be lodged to the authority imposing the disciplinary dismissal, namely the head of the entity (*jerarca institucional*). In case of dismissals, officials under the Civil Service Statute can appeal to the Civil Service Tribunal (*Tribunal de Servicio Civil*), whose decision is final. Notably, the law does not indicate a specific deadline for notifying the decision of the head of the entity nor for the Civil Service Tribunal to resolve appeals lodged. However, article 352 of the LGAP is applied as a supplementary rule in both cases. Thus, the appeal case is concluded within 8 days according to the provisions of article 352 LGAP. In addition, the LMEP does not indicate which body will be responsible for appeals lodged by public officials working in institutions that are not covered by the Civil Service Statute. Overall, while the LMEP is indeed a step forward in the harmonisation of the legal framework, it only covers the proceedings for dismissal and its broad scope in Article 2 is again reduced to being applied only to the Central Administration according to Article 21.

Table 5.1. Comparative Overview of Costa Rica's disciplinary dismissal process under the Civil Service Statute and LMEP

Dismissal process according to Civil Service Statute	Dismissal process according to LMEP
The Minister submits in writing the decision to dismiss the official to the Directorate General of Civil Service, stating the legal reasons and the facts on which it is based, except in the case of procedures for the dismissal of civil servants of the Ministry of Public Education, where the request is directed to the Civil Service Tribunal.	Within a month after a head of an institution is notified, ex officio or by complaint, of a possible misconduct, a preliminary investigation is initiated. Upon conclusion of the preliminary investigation, the head of the institution may reach the decision to initiate the special administrative dismissal procedure
The Directorate General of Civil Service informs the public official and gives him/her a non-extendable period of ten days from the date of receipt of the notification for defense. In case there no element of defense is raised, the official is dismissed.	The single special administrative dismissal procedure is concluded within two months of its initiation, with the objective to ensure due process and its principles. The head of the institution appoints a body to lead the process, which shall formulate the charges in writing and shall provide the public employee with notice for a period of fifteen days, to examine all the evidence offered in an oral and private hearing. Within the indicated period, the public employee shall present, in writing, his or her defense and may offer any supporting evidence he or she deems appropriate. If the employee has not filed any opposition within the established time frame or if he/she has expressly stated his/her conformity with the charges against him/her, the head of the institution shall issue the dismissal resolution without further proceedings.
If the charge or charges involve criminal liability or the reputation of the Ministry is at risk, the Minister may, in his initial note, order the provisional suspension of the person concerned from holding office, informing the Directorate General of the Civil Service thereof.	If the charge or charges made against the employee or public servant imply criminal liability or when it is necessary for the success of the administrative disciplinary dismissal procedure or to safeguard the reputation of the Public Administration, the head of the institution may decree, in a reasoned resolution, the provisional suspension of the public employee. If criminal proceedings are initiated against the public employee, such suspension may be decreed at any time, as a consequence of an arrest or preventive detention order, or a final judgment with a custodial sentence.
If the interested party objects within the legal time limit, the Directorate General of the Civil Service gathers the appropriate information, hears both parties, examines the evidence offered and any other evidence it deems necessary to order, within a non-extendable period of fifteen days. After that, it sends the file to the Civil Service Tribunal, which shall issue a ruling on the case. If the Tribunal deems it necessary, it may order an extension of the investigation, receive new evidence and take any other steps it deems appropriate for its better assessment.	If the interested party objects within the legal time frame, the body directing the process shall resolve prior objections that have been presented and shall summon an oral and private appearance before the Administration, in which all pertinent evidence and arguments of the parties shall be admitted and received. Once the evidence has been examined, the preliminary objections filed within the ten-day period granted to oppose the transfer of charges have been resolved, and the conclusions have been presented by the parties or the period for such purpose has expired, the case file shall be duly investigated and the respective report shall be submitted to the head of the institution for the issuance of a final decision. The head of the institution shall decide to dismiss the public servant or shall declare the lack of merit, in which case the file is archived. However, if he/she considers that the misconduct has taken place, but that its seriousness does not warrant dismissal, he/she shall order an oral reprimand, a written warning or a suspension without pay for up to one month, depending on the seriousness of the misconduct.
After the decision from the Civil Service Tribunal, the parties have a period of three working days to appeal it before the Administrative Tribunal of the Civil Service, whose decision will be final.	The decision ordering the oral reprimand, written warning or suspension without pay for up to one month may be appealed before the body issuing the resolution, which will resolve the appeal for revocation. In case of public servants working in an institution covered by Law 1581, Civil Service Statute of May 30, 1953, and the appeal shall be resolved by the Civil Service Tribunal. The head of the institution shall submit to the Civil Service Tribunal, on appeal, the file of the corresponding administrative proceeding containing the sanction resolution as well as the resolution of the appeal for revocation, with an expression of the legal reasons and the facts on which both resolutions are based.

Source: Developed by OECD based on the Civil Service Statute and LMEP.

When analysing the typology of sanctions in the legislation mentioned above, there is some degree of homogeneity. Nonetheless, differences exist in the multiple and diverse legal provisions regulating the exercise of disciplinary power with respect to the description of the offences and the details of the procedures. In ascending degree, the typical sanctions are:

- Verbal (oral) reprimand (or warning or reprimand)
- Written reprimand (or warning or reprimand)
- Suspension from work without pay (salary)
- Dismissal without responsibility, revocation of appointment or separation from public charge.

Costa Rica could develop a set of common disciplinary rules to streamline its overall disciplinary framework across the public sector and ensure fairness, clarity and a coherent level of disciplinary accountability

Fairness is key in safeguarding citizens' and public officials' trust in enforcement mechanisms and in the rule of law more generally. Adherence to fairness standards is particularly relevant in cases of integrity violations, which may have high political significance and impact, especially if top-tier elected and appointed officials are involved. The concept of fairness is overarching, encompassing a number of general principles of law, such as access to justice, equal treatment and independence of the judiciary. Homogeneity of integrity-related duties and responsibilities increases legal certainty and favour understanding and alignment of public officials with the expected ethical behaviours.

In Costa Rica, however, as emphasised in the previous section, the overall disciplinary framework is currently highly fragmented. While there is some degree of homogeneity among the types of sanctions provided for in the various laws and regulations, there are many differences across categories of public officials, in terms of not only procedure but also concerning the description of the offences contained in the various regulations.

This fragmentation and lack of homogeneity of the disciplinary framework was pointed out as a key weakness during the fact-finding mission interviews and a focus group conducted by the OECD with officials responsible for disciplinary enforcement. The officials emphasised that the lack of a uniform legal framework is one of the elements that undermines the efficiency and effectiveness of disciplinary enforcement. Costa Rica's recently adopted National Strategy for Integrity and Prevention of Corruption (*Estrategia Nacional de Integridad y Prevención de la Corrupción*, ENIPC) also identifies this lack of a homogenous legal framework, especially concerning the sanctions, as one of the key weaknesses of disciplinary enforcement in the country that needs to be addressed (ENIPC action 2.4.1.). In fact, the 2021 Capacity to Combat Corruption Index emphasises that corruption challenges in Costa Rica are mainly caused due to the complex judicial proceedings and regulatory gaps in the country (Americas Society et al., 2021[5]).

Therefore, Costa Rica could ensure the alignment of the disciplinary framework and introduce greater homogeneity by developing a set of common rules applying to all public officials, which could then be complemented by regulations of specific entities or sectors. For example, the actors of the co-ordination mechanism proposed in Chapter 1 could be assigned the responsibility to prepare a legislative proposal aiming to achieving such an alignment.

The legislative proposal could seek to develop a new instrument addressing the subject matter in a more comprehensive way, including institutional issues relating to the assignment of disciplinary responsibilities, with the objective to introduce a uniform disciplinary framework applicable to the whole public administration. Alternatively, the reform proposal could take into account the existing legal framework and integrate a set of common disciplinary rules to the General Law of Public Administration (Law 6227 of 1978) which applies to the entire public sector, or the new LMEP. Finally, another option to consider could be the codification of the current disciplinary rules found in existing laws. This would address the issue of

fragmentation and allow a more systematic arrangement of the applicable framework, thus ensuring clarity of law.

As for the elements to be harmonised, priorities could be given to:

- The typologies of sanctions, as proposed by the ENIPC.
- The criteria to define offences and a minimum set of offences to be sanctioned in any entity, including breaches of integrity rules and principles.
- The standard proceedings for all types of offences with some basic procedural principles and due process rights to be guaranteed.

These rules could continue allowing justified exceptions for autonomous bodies, which should try, however, to align as much as possible their own regulations, especially with regards to due process principles, typologies of sanctions, basic offences and procedural foundations. As a result, Costa Rica would develop a uniform and coherent disciplinary system applying to the officials of the central and the decentralised administrations (both the territorial and institutional ones), which nonetheless would be able to take into account the specificity and autonomous status of some entities, as done in other OECD countries.

Indeed, in several countries disciplinary powers are exercised at the organisational level. However, guidance provided at the central level ensures a harmonised implementation of the disciplinary framework across the entire public administration. For example, the Civil Service Management Code in the United Kingdom recommends compliance with the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance Procedures and notifies departments and agencies that the code is given significant weight in employment tribunal cases and will be taken into account when considering relevant cases. The Australian Public Service Commission (APSC) has also published a comprehensive Guide to Handling Misconduct, which provides clarifications of the main concepts and definitions found in the civil service code of conduct and other applicable policies/legislation as well as detailed instructions to managers regarding the implementation of proceedings. In Brazil, the Comptroller General of the Union (*Controladoria-Geral da União*, CGU) provides various tools for guidance to respective disciplinary offices, including manuals, questions and answers related to most recurrent issues, and an email address to clarify questions related to the disciplinary system (OECD, 2020[4]). A similar approach is followed in Malta, where the Public Service Commission (PSC) is endowed with the power to provide rulings and direction on the interpretation of the regulations if the need arises, as well as to enquire into the disciplinary control exercised by Heads of Departments. The PSC also exerts a monitoring role to ensure compliance across line departments. To this end, it carries out on-the-spot compliance assessments and desk-based checks, on disciplinary/criminal cases instituted against public officers (Public Service Commission, 2021[6]).

Costa Rica could consider expanding the disciplinary authority of the Supreme Electoral Tribunal to include the imposition of sanctions for corruption-related violations and establishing a comprehensive set of disciplinary rules for members of Parliament

Sanctions are integral to meaningful regulation and to the overall legitimacy of a parliamentary regulation system. As in any fair disciplinary regime, sanctions for disciplinary violations committed by members of Parliament have to be proportionate to the severity of the offence and the number of infractions (OSCE, 2012[7]). To achieve this, parliamentary regulation systems may include a wide range of sanctions, from relatively weaker penalties that can be seen as “reputational”, through fines and temporary suspensions from office. The ultimate political sanction – loss of a parliamentary seat – should be reserved to very serious offences only (OSCE, 2012[7]).

In Costa Rica, the disciplinary framework applying to members of the supreme powers is regulated by Article 43 of Law 8422 for disciplinary violations related to corruption, which covers deputies, councilmen, municipal mayors, magistrates of the Judicial Branch and of the Supreme Court of Elections, and ministers of Government, The relevant sanctions are administered by the Comptroller and Deputy Comptroller

General of the Republic (*Contralor y Subcontralor Generales de la República*), the Ombudsman of the Republic and the Deputy Ombudsman (*Defensor de los Habitantes de la República y el Defensor Adjunto*), the Regulator General and the Attorney General of the Republic (*Regulador General y el Procurador general de la República*), or the directors of autonomous institutions, the Supreme Electoral Tribunal (*Tribunal Supremo de Elecciones*), the Supreme Court of Justice (*Corte Suprema de Justicia*), the Council of Government (*Consejo de Gobierno*), the Legislative Assembly (*Asamblea Legislativa*) or the President of the Republic, depending on the case.

Although Article 43 regulates disciplinary administrative liability of these public officials, the competence for the imposition of disciplinary sanctions regarding the indicated positions remains unclear since the adoption of the law in 2004 and even up to date. Consultations with stakeholders carried out for the purposes of this Integrity Review indicated that the reason for this institutional uncertainty is the lack of more specific rules or regulations. As a rule of thumb, the appointing authority has the competence to remove any public official in case of misconduct and, accordingly, to impose disciplinary sanctions. However, this general rule requires further technical legal instruments that would enable its implementation and thus, remains inactive in practice.

More specifically, while the Rules of Procedure of the Legislative Assembly (*Reglamento de la Asamblea Legislativa*) establish in Chapter II a disciplinary regime for deputies, this refers only to the imposition of sanctions in case the Assembly is unable to meet due to lack of attendance and does not establish any disciplinary liability for integrity-related violations. Apart from this, in the Legislative Assembly there is no mandate for the investigation of violations committed by deputies or any other regulation regarding their administrative discipline.

Under the current regime and according to Article 262 of the Electoral Code, the Supreme Electoral Tribunal is the instance that revokes the credentials of the president, the vice presidents of the Republic and the deputies to the Legislative Assembly, but only for causes established in the Constitution. Additionally, Article 43 of Law 8422 establishes that the Supreme Electoral Tribunal is also the authority imposing sanctions to members of the Supreme Powers for violations described in that law. However, this only applies for elected officials at the municipal level (*Administración Decentralizada Territorial*) and does not cover the deputies. This creates a regime of privilege in favour of deputies, who, unlike other public officials, are currently outside the application of the Law 8422, as they cannot be sanctioned with the loss of their credentials for violation of the duty of probity.

Recent initiatives (Bill 22226 and the draft reform of Article 112 of the Constitution) seek to address these gaps. According to these, disciplinary liability of members of Parliament is established and violations of duty may result to loss of credentials, in the cases and in accordance with the “procedures established by law”. Notably, the cases and procedures applicable have not yet been defined by law, thus creating a legal gap, hindering the enforcement of the sanction, and ultimately creating perceptions of impunity. Due to this legal gap, no specific instance is established for these cases, but rather the investigation is referred to the Attorney for Public Ethics (*Procuraduría de la Ética Pública*, PEP) and the Supreme Tribunal of Elections, as well as the Plenary of the Legislative Assembly, which are named as the competent bodies to apply the regime of liability of Members of Parliament for violations of the duty of probity and to impose the corresponding sanctions, according to Article 8 of the draft Bill 22226.

In addition to the above, according to Article 21 of the LMEP, the Legislative Branch shall apply the dismissal process foreseen for public officials in accordance with their internal regulations and their own laws or statutes, depending on the case. The reason for this is that the “self-regulation” regime applying to members of Parliament is enshrined in the Constitution. In that sense, the position of members of Parliament is incompatible with a hierarchical employment relationship, in which the head of the institution would oversee the disciplinary process, as is the case with other categories of public officials. Because members of Parliament are “directly appointed” by the people, there is no body of constitutional rank that has the power to impose sanctions on them. In so far it seems that while this is a step towards harmonising

the various disciplinary provisions applying in different categories of public officials, it remains unclear how this can be implemented in practice in combination with the relevant constitutional provisions.

Although under the current legislative framework, all public officials fall under the regime of law 8422 and thus also its article 39 establishing administrative disciplinary sanctions, Article 40 of the Law requires that these sanctions are imposed by the body holding disciplinary authority in each public entity. In the case of the deputies and as explained above, this body remains yet to be determined. As a result, the current system is insufficient to guarantee the enforcement and promotion of parliamentary standards. To avoid cultivating a climate of impunity, Costa Rica could consider amending article 262 of the Electoral Code to expand the disciplinary authority of the Supreme Electoral Tribunal over deputies, so that it includes corruption related violations established in Law 8422. This will allow to streamline the disciplinary rules of Law 8422 through the Electoral Code, thus establishing the Supreme Electoral Tribunal as the disciplinary authority responsible for the imposition of sanctions to members of Parliament, including deputies, and avoiding any legal gaps arising from the special constitutional status of these officials. Indeed, the Supreme Electoral Tribunal would be constitutionally well equipped to undertake this role. In fact, according to Article 9 of the Constitution of Costa Rica, the Supreme Electoral Tribunal is equipped with the rank and independence of the Powers of the State and is exclusively and independently in charge of the organisation, direction and supervision of the acts related to elections, as well as other functions attributed to it by the Constitution and the laws. In addition, the Supreme Electoral Tribunal consists of members of the Supreme Court of Justice, which enables it to resolve complex constitutional issues arising from the enforcement of disciplinary regulations to members of the Parliament.

As a next step, Costa Rica could consider establishing a transparent procedure for scaling from softer to tougher measures as the severity of the offense increases. Having a consistent approach to imposing sanctions is vital to avoid any suggestion that their application is discretionary, to promote best practice and to guarantee that individuals covered by the integrity framework understand what is expected of them (House of Commons Committee on Standards, 2020[8]). Additionally, although no two cases of misconduct are identical, individuals have the right to be dealt with no more severely or more leniently than another in a similar set of circumstances (House of Commons Committee on Standards, 2020[8]). This could be achieved by defining in the Rules of Procedure of the Legislative Assembly a list of aggravating and mitigating factors that should be considered when revising cases to impose sanctions, including, for example, standard sanctioning thresholds, to the extent possible. Good practice from other jurisdictions can be used as a basis to propose a wide set of proportionate sanctions as well as the aggravating and mitigating factors that could be used to analyse specific cases (Box 5.2).

Box 5.2. System of sanctions for breaches of integrity-related violations by Members of Parliament

Netherlands

In the Netherlands, the Integrity Investigation Board receives and investigates complaints regarding violations of the Code of Conduct by MPs. If the Board establishes a violation of the Code of Conduct, a recommendation for a sanction can be made in the report that is sent to the Presidium (executive committee of the House of Representatives). Possible sanctions are clearly delineated in the Regulations on Supervision and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General, under Chapter 5: Sanctioning. These include:

- an instruction, a measure that obliges a MP to rectify a violation of the Code of Conduct,
- a reprimand, including a public letter from the Presidium addressed to a MP in which the act that led to a violation is rejected, and
- a suspension, including the exclusion of a MP for a period of up to one month from participation in plenary sittings, committee meetings or other activities held by the House.

Additionally, the explanatory notes of the Regulations provide more details outlining in which circumstances certain sanctions are utilised. For instance, reprimands can be seen as a warning to the MP, while suspension is the most severe form, which is only utilised in the event of a breach of secrecy or confidentiality. The Regulations also stressed that the sanction of suspension is flexibly framed so that the measure can be tailored appropriately and proportionately to the nature and severity of the violation.

United Kingdom

In its report *Sanctions in respect of the conduct of Members* (2020), the Parliamentary Commissioner for Standards of the United Kingdom sets out a table listing sanctions recommended in individual standards cases since 1995, which are considered to be useful and meaningful sanctions for MPs who are found to be in breach of the Code of Conduct for MPs. The sanctions are arranged in, approximately, ascending order of seriousness:

Possible sanction or remedy	Notes	Decision making body
Words of advice or warnings given by Parliamentary Commissioner for Standards or others	Warnings to remain active for twelve months	Parliamentary Commissioner for Standards
Requirement to attend training Training courses include: • Equality and Diversity • Dignity in the workplace • Good employer • Anger Management Parliamentary Commissioner for Standards to be able to require MP to attend other bespoke training or coaching as decided	Parliamentary Commissioner for Standards to receive report from provider of training on attendance and engagement of MP and to follow up one year after training completed.	Parliamentary Commissioner for Standards
Letter of apology to complainant (ICGS only) or to Committee	Parliamentary Commissioner for Standards to approve text in ICGS cases	Parliamentary Commissioner for Standards
Apology on point of order or by personal statement (formal apology in the Chamber) which (in ICGS cases) might be in conjunction with letter of apology to complainant	Parliamentary Commissioner for Standards to approve text of letter Committee on Standards to require personal statement apology	Parliamentary Commissioner for Standards

Withdrawal of services / access from MP (not from office or constituents), for example exclusion from catering facilities or library Services. (Could be used in ICGS cases)	In conjunction with security team / catering staff / library staff Parliamentary Commissioner for Standards to decide on length of exclusion	Parliamentary Commissioner for Standards
MP not to be permitted to serve on Select Committee	Committee on Standards to decide on length of exclusion	Committee on Standards
MP not to be permitted to travel abroad on parliamentary business	Committee on Standards to decide on length of exclusion	Committee on Standards
MP to repay part or all of cost of investigation	Parliamentary Commissioner for Standards to decide/advise on the sum to be repaid	Parliamentary Commissioner for Standards / Committee on Standards
MP to be suspended from service of the House, without pay		House of Commons, on recommendation from Committee on Standards
MP to be expelled		House of Commons, on recommendation from Committee on Standards

Additionally, drawing on the Committee's past conclusions in a range of cases, the Parliamentary Commissioner for Standards proposes a list of aggravating and mitigating factors:

Aggravating factors	Mitigating factors
Non-cooperation with the Commissioner or the investigation process; concealing or withholding evidence	Physical or mental ill health, or other personal trauma
Seniority and experience of the Member	Lack of intent to breach the rules (including misunderstanding of the rules if they are unclear)
Racist, sexist or homophobic behaviour	Acting in good faith, having sought advice from relevant authorities
Use of intimidation or abuse of power	Evidence of the Member's intention to uphold the General Principles of Conduct and the Parliamentary Behaviour Code
Deliberate breach or acting against advice given	Acknowledgement of breach, self-knowledge and genuine remorse
Motivation of personal gain	
Failure to seek advice when it would have been reasonable to do so	
A repeat offence, or indication that the offence was part of a pattern of behaviour	
Any breach of the rules, which also demonstrates a disregard of one or more of the General Principles of Conduct or of the Parliamentary Behaviour Code.	

Source: (House of Commons Committee on Standards, 2020[8]; Tweede Kamer der Staten-Generaal, 2021[9]).

Strengthening the institutional framework and promoting mechanisms for co-operation

In view of developing a uniform disciplinary system, Costa Rica could mandate the MIDEPLAN as the lead agency issuing overall disciplinary enforcement policies, including the development of centralised guidance to entities with technical support from the General Directorate of Civil Service

Disciplinary systems require the leadership of an entity or body in charge of guiding disciplinary areas to ensure uniform application of related rules and sanctions. According to the OECD experience, these actors are commonly in charge of supporting co-ordination and providing advice through channels for continuous

communication and organising venues for regular meetings with entities. In addition, they are often well positioned to strengthen the capacity of disciplinary areas and to support them in building and sustaining cases when needed. In particular, those co-ordinating entities can provide tools and channels to guide and support investigative bodies in preparing cases through guides, manuals, or other tools to establish contact, such as dedicated hotlines or electronic help desks addressing doubts or questions related to disciplinary matters and procedures.

Costa Rica does not currently have a central institution leading on disciplinary matters for the whole public administration. However, as mentioned above, the new Law on Public Employment (LMEP) assigns the stewardship of the General Public Employment System to the MIDEPLAN, which also has the steering role of public employment pursuant to Law 9635 of 2018.

Based on this decision (and the decision against a dedicated Ministry of Public Employment), and given the responsibilities assigned to the MIDEPLAN that are potentially relevant for the disciplinary function (Box 5.3), it would be straightforward to assign the steering of the disciplinary regime to the MIDEPLAN. Indeed, based on its mandate, the MIDEPLAN establishes, directs and co-ordinates general policies, provides advice and support to all public institutions and defines guidelines and administrative regulations aimed at the unification, simplification and coherence of employment in the public sector. In relation to disciplinary enforcement, the MIDEPLAN is already planning to create a platform under its mandate, which could be used to give the institutional planning units the responsibility to develop disciplinary processes under the MIDEPLAN guidance.

Box 5.3. The MIDEPLAN's responsibilities in the Law on Public Employment related to disciplinary measures

- Establishing, directing and co-ordinating the issuance of public policies, national public employment programmes and plans.
- Issuing general provisions, guidelines and regulations aimed at the standardisation, simplification and coherence of public employment.
- Managing and keeping the integrated public employment platform up to date.
- Directing and co-ordinating the execution of inherent competences in the field of public employment.
- Collecting, analysing and disseminating information on public employment of the entities and bodies for the improvement and modernisation of these.
- Co-ordinating with the Attorney Office of Public Ethics to issue general provisions, guidelines and regulations for the instruction of public servants on the duties, responsibilities and functions of the position, as well as the ethical duties that govern the public service.

Source: Law on Public Employment (Law 10159, *Ley Marco de Empleo Publico*, LMEP).

In turn, the General Directorate of Civil Service (*Dirección General del Servicio Civil, DGSC*) has been developing technical competencies on processes of the human resources management system in the Civil Service Regime and could continue to assume a technical leadership in support to the MIDEPLAN and public entities. As such, its functions under the current regime include the recruitment and selection of administrative, artistic and teaching posts, performance management, training, provision of technical assistance, classification and appraisal of posts, human resources auditing and dismissal, as well as permanent advice at political-economic levels. With specific regard to disciplinary enforcement, pursuant to the General Law of Public Administration, the DGSC is part of the summary proceedings. In particular, it receives the dismissal requests from public entities, gives the accused the possibility to intervene and submits the file to the Civil Service Tribunal for final decision. In this context, the DGSC provides guidance

on this to entities, as done for example in relation to the presentation of dismissal requests to the Directorate itself (Circular DG-CIR-010-2018, *Lineamientos para la presentación de la "Gestión de Despido" ante la DGSC*), which was issued in 2018 to address inconsistencies in documents with the objective to improve the process and to ensure its efficiency.

With regards to the changes brought under the recently introduced LMEP and according to Article 23c of the Law, the Training and Development Center (*Centro de Capacitación y Desarrollo*, CECADES) of the DGSC, in strict adherence to the guidelines issued by the MIDEPLAN, will be in charge of providing technical assistance, monitoring and controlling the training activities carried out the institutions covered by the Civil Service Statute, with the exception of the teaching sector. Furthermore, as described above, the LMEP introduced some changes to the disciplinary dismissal process, which affects the current mandate of the DGSC, but it does not prevent it from using its technical expertise to support the MIDEPLAN in providing central guidance on the implementation of disciplinary processes. In fact, DGSC is rightly placed to undertake this supporting role in the field of its competences so far, as one of the key pillars of the General System of Public Employment according to Article 6 of LMEP.

Overall, providing centralised guidance on disciplinary issues and processes through MIDEPLAN with technical support from DGSC would help avoid inconsistencies arising from the autonomy of decentralised bodies and special categories of public officials, such as the judiciary and the legislative branch. With due consideration of the different applicable regimes, the oversight and co-ordination provided under the leadership of MIDEPLAN will help ensure a more uniform application of the disciplinary system in addressing common challenges and promoting the exchange of good practices. This can be achieved through the establishment of channels for continuous communication and venues for regular meetings with entities with the view to strengthen the capacity of disciplinary enforcement officials and support them in building and sustaining cases.

Furthermore, MIDEPLAN in cooperation with DGSC could consider providing entities with tolls and channels to guide disciplinary officials in preparing cases consistently, such as guides, manuals, or other tools to establish direct contact (e.g. dedicated hotlines or electronic help desks addressing doubts or questions regarding disciplinary matters and procedures. Administrative judges with experience in disciplinary matters from a judicial perspective could be engaged to support with the development of the guidance materials, in order to ensure that the rights of the accused are safeguarded across the Costa Rican public sector by use of key concepts of administrative due process that could be applied consistently.

The MIDEPLAN could introduce criteria for assigning disciplinary responsibilities to a specific function within entities

Enforcement actions should only be taken based on the law, and those enforcing the law should therefore, act objectively. Objectivity should apply through all phases of all enforcement regimes. In disciplinary proceedings, decisions – at least at the first instance level – are usually taken by administrative bodies, which are not always judicial in nature. Since members of those disciplinary bodies are not judges but civil servants, procedural safeguards should be in place to guarantee that their actions are free from internal or external influence, as well as from any form of conflict of interest (OECD, 2020[4]).

At a minimum, these procedural safeguards can include the following components:

- Outlining the mandate and responsibilities of disciplinary institutions as a clear basis for their existence.
- Ensuring that personnel responsible for disciplinary proceedings are selected based on objective, merit-based criteria (particularly senior-level positions).
- Ensuring that personnel responsible for disciplinary proceedings enjoy an appropriate level of job security and competitive salaries in relation to their job requirement.

- Ensuring that personnel responsible for disciplinary proceedings are protected from threats and duress, so as to not fear reprisals.
- Ensuring that personnel responsible for disciplinary proceedings have autonomy in the selection of cases to take forward.
- Ensuring that personnel responsible for disciplinary proceedings receive timely training in conflict-of-interest situations and have clear procedures for managing them.

In Costa Rica, the LMEP assigns new responsibilities and decision-making powers relating to the disciplinary process to each public entity. In fact, according to Article 21 of the LMEP (Table 5.1), the head of each public entity is exclusively responsible for reaching the decision to launch a preliminary investigation to examine the merit of a complaint about a possible misconduct and to determine whether the special administrative dismissal procedure should be carried out. While this is a common approach across many jurisdictions (e.g. Malta, Mexico, Thailand), the above procedural safeguards could be applied as a checks and balances mechanism to ensure the objectivity of decisions taken and the integrity of the disciplinary process.

Especially in small sized entities, there is a risk that personal ties of officials involved in the disciplinary proceedings might affect the outcome of cases. One way of ensuring the principle of fairness in disciplinary proceedings would be to equip the accused person with the right to object to the body appointed by the head of the institution to lead the special administrative dismissal procedure if, for example, there is a personal involvement or connection with any of its members or other causes that would prevent impartiality (OECD, 2021[10]). In Costa Rica, this is ensured through the institute of recusal established in the Articles 230 and following of the LGAP, which allows the public official subject to the disciplinary process to request the removal of civil servants appointed as the governing body on grounds of impartiality.

Overall, principles and guarantees of fairness should be mentioned explicitly in any guidance tools or regulations regarding disciplinary proceedings with the objective to uphold the highest integrity standards and prevent any form of undue influence that may jeopardise the validity of disciplinary decisions. A relevant good practice can be found in the General Guidelines for the analysis of alleged irregularities in the framework of internal audits of the Office of the Comptroller General in Costa Rica. The General Guidelines establish the principles of investigating alleged misconduct, including the principle of legality, timeliness, independence and objectivity (Office of the Comptroller General, 2019[11]). Similarly, the Manual on Disciplinary Cases of the Public Service Commission of Malta states that the disciplinary board investigating the case should ensure that it carries out its functions fairly and impartially throughout the hearing of the case (Public Service Commission, 2021[6]).

In the context of the Costa Rican disciplinary framework, the lack of specific criteria for placing or structuring an area in charge of disciplinary authority may create risks to the impartiality and objectivity of the process. Indeed, the only reference in relation to the disciplinary function within public entities is that the power to impose a disciplinary sanction rests in the hierarchy of the respective institution. The MIDEPLAN issued the Nomenclature Guide for the Internal Structure of Public Institutions and the Guide for Administrative Manuals (*Guia de Nomenclatura para la Estructura Interna de las Instituciones Publicas* and *Guía de Manuales Administrativos*), but neither of them refers to an area in charge of disciplinary authority.

In practice, the head of the entity typically assigns the investigation and substantiation of disciplinary proceedings to the legal or human resources areas, which are *de facto* in charge of the disciplinary function. However, the decision-making power regarding the launch of the investigation and the administrative dismissal procedure lies with the head of the institution. Some public entities have established specific administrative units for disciplinary procedures, such as the Ministry of Public Education, the Ministry of Public Security, the Ministry of Finance, the National Registry, the Judiciary and the Ministry of Justice. Experience from the Brazilian public sector has shown that this approach of establishing dedicated disciplinary areas within entities works well in practice.

Drawing from the practice of these Ministries and to further guarantee the objectivity of disciplinary enforcement, but also to give it greater visibility and prominence within public entities, the MIDEPLAN could take gradual steps to formalise and develop disciplinary areas in public entities. For that purpose, it could identify entities, which are more at risk of disciplinary breaches, including integrity breaches, as well as public entities that have developed a more advanced institutional model, which could be considered as a model for replication elsewhere. Based on that, the MIDEPLAN could gradually require the establishment of a disciplinary area in public entities if certain criteria are met. These criteria could include the level of risks but also the size of the entity, for example.

For entities that would not be required to have a dedicated disciplinary area, additional guidance should be provided as to the minimum requirements to be followed in terms of capacity and expertise when the disciplinary function is assigned to other areas such as legal affairs or human resources management. These criteria and requirements could be established, for example, in the Nomenclature Guide for the Internal Structure of Public Institutions.

In case of very small entities or small municipalities with very few resources, Costa Rica could explore providing disciplinary services through shared services (OECD, 2021[10]). As far as the shared model is concerned, several countries have been implementing similar approaches in the field of internal audit, to address challenges arising from reduced budgets. For example, the UK has been working on developing a shared audit services model by consolidating internal audit services, moving from the departmental structure to a single integrated audit service, the Government Internal Audit Agency (GIAA). The GIAA is responsible for providing individual departmental audit and assurance services across government and the development of the profession across government. This model could be used in an adapted version for establishing dedicated but shared disciplinary offices that would be legally authorised to carry out disciplinary investigations. The principle behind creating shared offices is to have sufficient numbers of disciplinary investigators grouped for the development of capabilities. Moreover, it results in various benefits deriving from the building of expertise, leading practices and improving the efficiency and quality of the overall system while reducing the financial cost (OECD, 2017[12]; OECD, 2021[10]).

When developing the criteria for the assignment of disciplinary responsibilities to a specific function within entities, particular attention should be paid to clearly separating the disciplinary function from ethical management. As elaborated in Chapter 1, the Costa Rican public sector is implementing an ethics management model (Modelo de Gestión Ética, MGE) with the support of the National Commission for Ethics and Values (CNEV) and the Institutional Commissions on Ethics (CIEVs), which are the implementing bodies of the CNEV in ministries and agencies of the executive branch. CNEV and CIEV promote ethics in the public sector and are responsible for providing relevant guidance through the development of an Ethics Code or Manual, communication campaigns and ethics training programs among others. Their role, which aims at building a trusting relationship, should remain clearly distinct from disciplinary issues and enforcement policies, which are by nature distrustful (OECD, 2018[13]). Therefore, disciplinary authority at the entity level should be exercised by a different function and CIEV units should not be involved in any stage of the disciplinary process.

Costa Rica could increase the capacity and stability of staff working on disciplinary matters and of the Civil Service Tribunal

The fair enforcement of a sanctioning regime also depends on adequate investigative resources and skilled staff. Providing training and building the professionalism of enforcement officials helps address technical challenges, ensures a consistent approach, and reduces the rate of annulled sanctions due to procedural mistakes and poor quality of legal files. This can be achieved through guidance and training that builds knowledge of how different regimes function and can be used in parallel with each other, and that increases capacity to use special investigative techniques for integrity violations. Capacity-building activities can also focus on strengthening technical expertise and skills in fields such as administrative law, IT, accounting,

economics and finance – which are necessary areas – to ensure effective investigations. In practice, many enforcement authorities face challenges in recruiting adequate staff and attracting specialised experts. However, capacity costs should be weighed against the costs of non-compliance, such as the decline in accountability and trust as well as the direct economic losses (OECD, 2018[14]).

As described above, in Costa Rica those who actually carry out disciplinary proceedings within entities, such as developing disciplinary files and materials, are typically officials belonging to areas, which vary from one institution to another, most commonly located in units responsible for human resource management and legal services. According to the information collected through the OECD questionnaire, to support disciplinary areas in carrying out these proceedings, the Comptroller General Office, the Attorney General Office and the Judiciary offer training courses on the exercise of disciplinary powers as a tool to strengthen institutional capacities. Apart from this specific activity, each institution defines training needs. In the case of the Executive Branch, in the Central Administration covered by Law 1581, there are Institutional Training Plans (*Planes Institucionales de Capacitación*, PIC) where all the needs are integrated. The Directorate General of the Civil Service's Centre for Training and Development (*Centro de Capacitación y Desarrollo*, CECADES) is in charge of providing the training units or equivalent units of the Executive branch with the advice and technical support necessary for the effective fulfilment of their functions. While some Institutional Training Plans identify the 'administrative and disciplinary proceedings' among their training needs, (e.g. the Institutional Training Plan 2021 of the Ministry of Agriculture and Livestock) there seems no regular programme or activity devoted to build capacity of officials dealing with disciplinary matters.

The need to strengthen disciplinary capacity in public entities has been emphasised during a focus group discussion with officials with disciplinary responsibility pointed out to the lack of a capacity-building plan on the matter, as well as the more general need to increase the human, financial and technological capacity of officials working on disciplinary matters. As raised by the focus group, this capacity gap affects the quality of legal documents, whose weaknesses eventually lead to cases not complying with procedural rules and standards, and thereby being annulled. A related and more general issue is the level of staff rotation which is a further obstacle to build capacity and retain knowledge and experience in carrying our disciplinary proceedings, which eventually affects the efficiency of disciplinary enforcement, levels of impunity and the respect of due process rights. Similar challenges concern the staff of the Civil Service Tribunal, which counts 3 official judges and 3 alternate judges as well as X officials to deal with an average of 200 cases per year**.** In addition, these judges are currently not employed full time, which does not only prevent the development of knowledge and expertise, but also creates a risk for the objectivity of their decision-making. This will change, however, with the entry into force of the LMEP, which transforms the Civil Service Tribunal into a permanently staffed institution. Indeed, the lack of training and capacity building activities is a critical shortcoming and initiatives to address this should be given a strategic vision, for example by developing the relevant activities centrally under the leadership of MIDEPLAN in cooperation with the DGSC, as elaborated in previous sections. In addition, strategic planning of such activities should take careful consideration of possible duplication of functions, and make use of existing structures and resources.

Some of the challenges, such as the high level of staff rotation, concern the broader public employment framework of Costa Rica. At the same time, some specific efforts could be made to strengthen the capacity of disciplinary areas, also considering the changes brought to the legal framework through the LMEP. First, public entities could ensure that they are adequately staffed with officials dealing with disciplinary enforcement and promote, to extent possible, stability and development of relevant knowledge and experience. Second, they could offer more continuous support and have courses on 'administrative and disciplinary proceedings' organised on a regular basis to train new staff and build capacity of the disciplinary function, especially in cases where rates of staff rotation are higher. In this context, CECADES – in co-ordination with the MIDEPLAN and the DGSC – could offer technical support and develop standard courses and materials on disciplinary enforcement, which could then be adapted and further developed by

single entities. For this purpose, they leverage the potential of virtual resources and develop both an online repository of key materials as well as a set of on-line courses as done in Brazil (Box 5.4). The development of these resources in Costa Rica could first focus on foundational issues and then address on needs and priorities identified by disciplinary areas and officials. Furthermore, the standardisations of legal documents (e.g. templates of decisions, investigation documents, etc.) could contribute to speed and transparency and improve their quality, thus avoiding potential annulments due to non-compliance with procedural rules and standards.

Box 5.4. Disciplinary knowledge and on-line courses in Brazil

The Comptroller General of the Union (*Controladoria-Geral da União*, CGU) has developed a Programme for Development and Continuous Improvement in Internal Affairs. The Programme includes specialised online courses on the anti-corruption law, relevant sanctions and key elements of the disciplinary administrative process covering the following topics:

- Federal Executive Branch Correction System.
- Disciplinary Law – legislation principles, duty to investigation, legal accountability.
- Disciplinary Responsibility – requirements, subjective and objective scope.
- Investigative and Accusatory Procedures – Preliminary Summary Investigation, Investigative Inquiry and Property Inquiry, Accusatory Inquiry and Disciplinary Administrative Proceedings.
- Administrative Disciplinary Process – phases, procedural communications, legal frameworks, sanctions and Final Report.
- Data processing: Access to Information Law and General Data Protection Law.

The course modules provide practical guidance on the disciplinary process regarding the admissibility of evidence, preliminary investigations, composition and requirements for members of investigative and prosecution committees, methods of procedural communications, burden of proof, confidentiality issues and statutes of limitations among others.

In addition, the CGU provides an open Knowledge Base, which is freely accessible online. The Knowledge Base is open to contributions from all correctional units in the country and gathers norms, manuals, jurisprudence, good practices, procedures and other information relevant to the disciplinary process of the Federal Executive Branch.

Source: https://corregedorias.gov.br/acoes-e-programas/cursos; https://corregedorias.gov.br/utilidades/conhecimentos-correcionais.

With reference to the Civil Service Tribunal, which according to the LMEP will become the only appeal instance, its capacity could be strengthened by progressively increasing the number of appointed full time judges, increase its staff proportionally with the number of cases being dealt with, and provide adequate technical capacities and tools to eventually adapt to the changes that the draft civil service law may bring. This support should continue to ensure the autonomy of the Tribunal and not influence in any way its decision-making processes.

It should be noted that currently, some entities lack a second instance in disciplinary proceedings (e.g. ARESEP). This is a critical inconsistency caused by the interim regime currently in force until the implementation of the LMEP. More specifically, the LMEP establishes in Article 49D that the Administrative Tribunal of Civil Service will be mandated to resolve, within a period of two months, the appeals that are lodged against decisions of the Civil Service Tribunal, excluding the issue of dismissals, which are currently heard in sole instance, as well as other matters submitted to it by law. According to fact-finding interviews conducted for the purposes of this Integrity Review, the law with this amendment leaves the Administrative

Tribunal of Civil Service practically void of functions, because on the one hand, there are no appeals to be examined that are not related to the issue of dismissals, and on the other hand, the law does not specify the "other matters submitted to it by law". At the same time, additional inconsistencies are caused as the LMEP does not amend the legal provisions currently in force according to which, the Civil Service Tribunal rules in sole instance (e.g. Article 14 of the Statute currently in force).

In order to ensure that all public sector entities have established a second instance of appeal and to avoid any possible waste of the resources of the Administrative Tribunal of Civil Service, the Civil Service Tribunal could strengthen its capacity by establishing a two-chamber system to examine appeals coming from the statutory regime and those coming from the decentralised public sector..

The need to strengthen disciplinary capacity is also underscored by the ENIPC, which has set – among its objectives – the promotion of awareness-raising, education and continuous training activities on the disciplinary regulations that sanction non-compliance with the duties of public service, improper, fraudulent and corrupt conduct, in order to ensure the effective handling of administrative disciplinary procedures and the imposition and enforcement of sanctions. For this purpose, the ENIPC defined as one of its actions to "empower the body responsible for the implementation of the sanctions process" with the aim to improve the effective and compliant application of the disciplinary framework.

Costa Rica could establish mechanisms and digital tools facilitating investigative co-ordination and co-operation between disciplinary bodies and other areas or actors in charge of administrative and criminal enforcement

Authorities responsible for disciplinary enforcement may become aware of facts or information relevant to another enforcement regime and they should notify them with fact and information that may be relevant to establish other kinds of responsibilities. This exchange of information should flow both ways, with other enforcement entities informing disciplinary authorities. Co-ordination mechanisms are thus vital to ensure that information is swiftly exchanged and enforcement mechanisms are mutually supportive. This is recognised by international instruments, which require state parties to take measures to encourage co-operation with and between their public authorities and law enforcement, both proactively (whenever an authority comes across a possible corruption offence) and upon request of the investigating and prosecuting authorities (United Nations, 2003[15]; Council of Europe, 1999[16]). Mechanisms for co-ordination among relevant institutions also help identify common bottlenecks, ensure continuous exchange of experiences, and discuss formal or informal means to improve enforcement as a whole.

In Costa Rica, beyond the internal disciplinary competence of the head of the entity and managers, the legal framework gives the possibility to investigate administrative irregularities in the public service to the internal audit function of entities and to the Office of the Comptroller General (CGR) depending on the subject matter. The CGR can recommend to the competent body the application of an administrative sanction – warning, suspension and dismissal – if a public official breached rules of the control and oversight system regulated by Law 7428 of 2004 or has caused damage to the public treasury. The competent authority has to comply with the recommendation issued by the CGR, unless, within eight working days from the date of communication of the act, a duly reasoned and substantiated request for review is filed by the head of the entity. The CGR may issue a reasoned resolution declaring the civil liability of a public official and its pecuniary amount when it ascertains a damage against public funds, arising from a flagrant and manifested illegal act.

Next to the CGR, each public entity has to count with an internal audit function reporting to the head of the entity but also receiving technical guidance and oversight from the CGR. Its main function is, pursuant to Law 8292 of 2002, to perform the independent, objective and advisory activity that provides assurance to the entity or body to validate and improve its operations, as well as to contribute to the achievement of the institutional mission and objectives. Based on Law 7428 and Law 8422, the internal audit function is empowered to deal with complaints submitted by citizens, establishing the duty to maintain confidentiality

with respect to the identity of the complainants and those under investigation, as well as the information, documents and other evidence gathered during the formulation of the report or investigation. As such, internal audits have the power to carry out investigations in response to the presentation of a complaint, at the request of an administrative body or even ex officio. In practice, this means that the investigations carried out by the internal audit functions are used as an input for the head of the entity to assess the possibility of opening an administrative procedure, without prejudice to any other action that is deemed appropriate. In this context and as already mentioned before, the CGR has developed a set of "General guidelines for the analysis of alleged irregularities" (*Lineamientos Generales para el análisis de presuntos hechos irregulares*) which provides a basic framework for the proper and transparent execution of the investigative work of public sector audits within the scope of internal audit functions' competencies, also covering issues of co-operation and collaboration. (Office of the Comptroller General, 2019[11]) (Box 5.5)

Box 5.5. Guidelines on investigative co-ordination and co-operation for internal audit areas

With respect to co-ordination and collaboration, the guidelines establish that in the course of investigations, internal audits may provide support to each other, such as advice, inputs, or exchange of experiences. Depending on the case, joint analysis may be carried out, which however does not compromise the autonomy of each audit. Likewise, any other entity or body of the public administration may support the internal audits in the analysis of allegedly irregular facts.

At the same time, the guidelines establish that after the initial analysis of each case, the internal audit unit may proceed with the following actions:

- Refer the matter to the relevant internal authorities of the institution in cases, which should be dealt with in the first instance by the Active Administration (*administración activa*) and the latter has not been made aware of the situation, or is conducting an investigation into the same facts.
- Refer the matter to external administrative or judicial authorities, in case this is deemed necessary due to the particularities of each case or in case there is an ongoing investigation about the same facts.

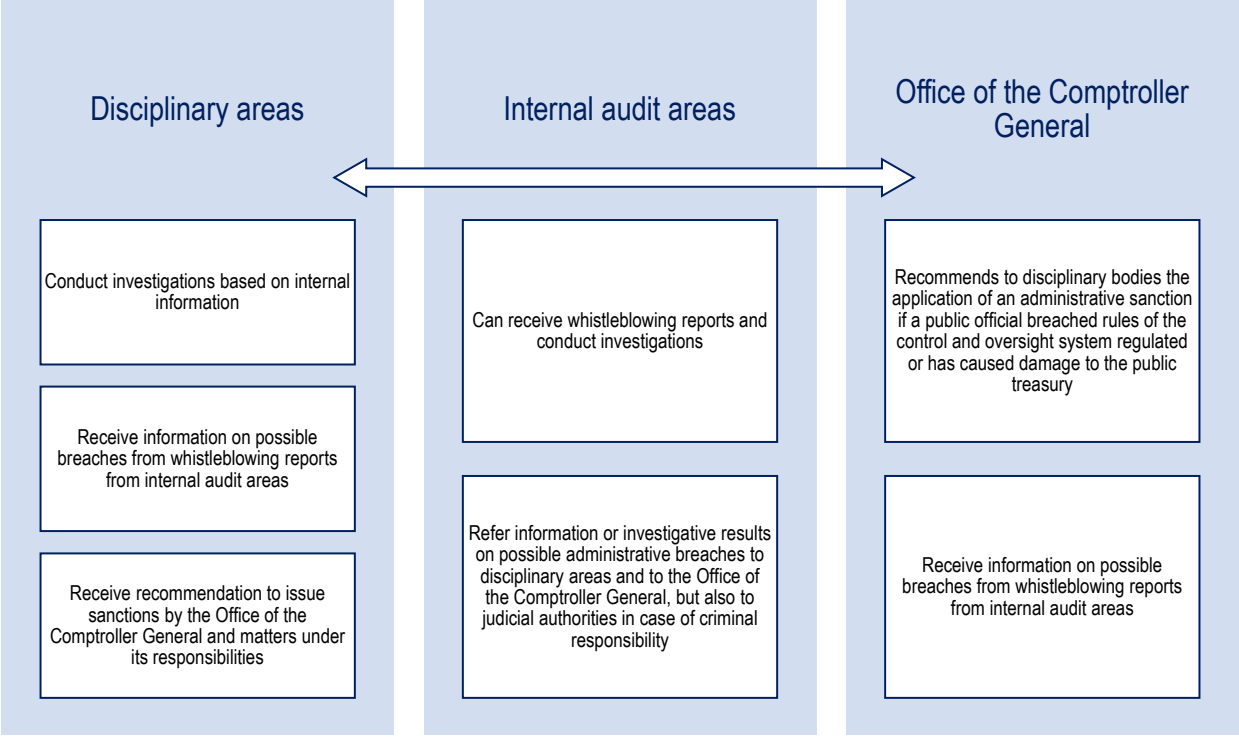
When the investigative procedures demonstrate the existence of sufficient elements to consider – at least to a degree of probability – the occurrence of alleged disciplinary violations, the internal auditor shall prepare a statement of facts. The statement shall be forwarded to the body exercising disciplinary authority or to the competent authority for its attention, as appropriate. The same process is also followed in case of suspected crimes, where the internal auditor is required to prepare a criminal complaint. The complaint is then forwarded to the Public Prosecutor's Office for further action.

Finally, according to the Guidelines, when Internal Audit prepares a statement of facts or a criminal complaint, it has a duty to co-operate with other competent authorities at all subsequent stages where it is required to do so. However, this co-operation is limited to the product produced, the actions taken and the criteria used.

Source: (Office of the Comptroller General, 2019[11]).

Because of this context, various areas or actors contribute to investigating possible administrative breaches and thereby ensuring disciplinary liability (Figure 5.2). However, besides the guidance illustrated in Box 5.5 there are no mechanisms or tools for the exchange of information to build disciplinary cases and, according to the information collected during the fact-finding mission, this has been even more challenging during the COVID-19 situation. Similarly, in the absence of a formal coordination mechanism, the administrative authority consults with the judicial authority on an ad hoc basis, when exchange of information or further coordination is required.

Figure 5.2. Interactions of various actors in the investigation of administrative breaches



Source: Developed by OECD.

Formally established legal and operational rules and conditions for sharing relevant information and ensuring co-ordination among entities involved can ensure swift access to critical information for the initiation or evidential support of proceedings. According to information collected through the OECD questionnaire developed for the purposes of this review, there is one case of standardised cooperation in the Costa Rican public sector between the Supreme Court of Justice and the Ministries of Public Security and of Public Works and Transport (Circular 17-2004, Agreement 26-2018). The circular and the agreement stipulate that the judicial offices of the country are required to inform the Ministry of Public Security and the Ministry of Public Works and Transport of any complaint of possible abuse of authority from the Traffic Policy. The Circular also includes the required information to be shared (i.e. basic information regarding the cases, alleged offence under investigation and status of the case), thus ensuring a standardised form of communication between the involved stakeholders.

Establishing mechanisms to ensure co-operation in or with disciplinary enforcement is key to standardise processes, promote timely and continuous communication, as well as mutual learning and dialogue to address challenges and to propose operational or legal improvements. Costa Rica could take steps to improve the existing situation both from a legal and operational point of view. First, it could create an informal working group as part of the technical sub-commission on enforcement recommended in Chapter 1. The future governing body of the disciplinary system, the Office of the Comptroller General, the Office of the Attorney General and the Office of the Public Prosecutor could discuss gaps and define legal and operational solutions to improve co-operation, for instance through a multi-agency agreement or promoting a regulation to enable the exchange of information between investigative bodies. Second, the working group could promote dialogue between entities to continuously understand bottlenecks and identify good practices, which could become general practice. For example, during the fact-finding mission, one of the participating entities mentioned that they are developing a technological platform, which – if effective – could be used by all entities to exchange information and ensure swift disciplinary action. At a

next stage, this platform could be integrated or at least inter-linked to the Public Employment Platform of Article 12 of the LMEP to allow for a coordinated exchange of information across public sector entities. Based on the OECD experience, working groups on enforcement can promote bilateral or multilateral protocols or memoranda of understanding to clarify responsibilities or to introduce practical co-operation tools between relevant agencies, with due respect of respective competences and investigative confidentiality.

Encouraging data collection and transparency on disciplinary enforcement

Costa Rica could build on ongoing initiatives to develop a standardised system for the collection of data on disciplinary cases

The collection, analysis and communication of data on enforcement can support the integrity system in many ways. First, statistical data about the disciplinary sanctions imposed following the integrity violation provide insights into key risk areas, which can inform the development or update of specific policies as well as integrity and anticorruption strategies. Second, data can feed indicators used for monitoring and evaluating integrity policies and strategies and can help assess the performance of the disciplinary system as a whole. Third, data can inform institutional communications, giving account of enforcement action to other public officials and the public (OECD, 2018[14]). Lastly, consolidated, accessible and scientific analysis of statistical data on enforcement practices enable the assessment of the effectiveness of existing measures and the operational co-ordination among anti-corruption institutions (UNODC, 2017[17]).

In Costa Rica, there is currently no standardised process regarding the collection of enforcement data and no specific entity has been assigned with a mandate to collect data and compile statistics on the disciplinary system for all 326 institutions of the Costa Rican public sector. Nevertheless, the specific functions of some institutions have enabled the partial collection of data regarding their own disciplinary management on an ad hoc basis.

According to information collected through the OECD questionnaire, the Civil Service Tribunal, which is the second instance appeal mechanism for disciplinary cases, collects the following data:

- Number of cases received per month.
- Type of action (dismissal or complaint).
- Cases per institution.
- Number of cases decided (by institution, by cause of action, by outcome - upheld or dismissed).
- Number of cases appealed.
- Number of cases returned from appeal and of these, how many upheld and how many reversed.

This is already a commendable first step. Costa Rica could build on the practice implemented by the Civil Service Tribunal to facilitate the consistent collection of data and ensure transparency and accountability of the enforcement system. With 326 public entities applying individual disciplinary processes at the organisational level, the collection of relevant data should be streamlined through a central government agency, which would be responsible for co-ordinating the data collection process across all Costa Rican public sector entities. This mandate falls naturally under the recently strengthened role of the MIDEPLAN following the adoption of the Law on Public Employment (Law 10159).

In light of the LMEP, the MIDEPLAN is leading the harmonisation of public employment processes across the entirety of the public service with new responsibilities including, among others, the co-ordination of public policies, national employment programmes and plans, developing and maintaining a public employment platform, as well as collecting, analysing and disseminating information from public entities on public employment issues (as described in Box 5.4). Considering that the MIDEPLAN has also been

assigned the mandate to co-ordinate with the Attorney Office of Public Ethics to issue general provisions, guidelines and regulations for public officials regarding their duties, responsibilities and functions, the collection and analysis of information on broader public employment issues could include data on disciplinary cases in the public sector.

The data collection process could be facilitated through the Integrated Public Employment Platform of Article 12 of the LMEP. Currently, the Public Employment Platform does not include disciplinary matters, but its scope could be accordingly expanded. In line with action 2.4.2. of the ENIPC on the "Use of open data on sanctions in public institutions to ensure inter-institutional ease of consultation, transparency of information and decision-making", the new platform could be enhanced to provide and analyse information on disciplinary sanctions by integrating features from the register of the General Directorate of the Civil Service for the Central Administration of the Executive Branch, which is currently available to the Institutional Human Resources Management Offices. The register is defined as a "Digital list in the Automated Human Talent Management System (*Sistema Automatizado de la Gestión del Empleo y del Talento*, SAGETH) and contains data of citizens, citizens who have been declared ineligible either because they have been dismissed for violation of the provisions of the Civil Service Statute, the Regulations of the Civil Service Statute or the respective autonomous regulations, depending on the seriousness of the misdemeanour in question. In so far, as emphasised in the ENIPC, the register can be used as the basis for the elaboration of a comprehensive and automated system for the collection and analysis of data on the disciplinary and sanctioning regime applied in Costa Rican public institutions.

In practice, this could be achieved by providing access to the new platform to all 326 institutions of the Costa Rican Public Sector. Each of these institutions would be able to insert their own data regarding, for example, the number of cases initiated and concluded, types of sanctions imposed, average length of proceedings, number of cases decided (by institution, by cause of action, by outcome (upheld or dismissed), number of cases appealed, etc. A similar model, which can be used as a good example in this case, is implemented by the Ministry of Finance and relates to the Costa Rican State's litigation liabilities.

Costa Rica could consider using disciplinary data to develop an evidence base for the assessment of anti-corruption policies and publishing selected information to enhance transparency about the outcomes of cases and the overall effectiveness of enforcement mechanisms

At a next stage, the information collected on disciplinary cases could be used by the MIDEPLAN to assess the overall effectiveness of the disciplinary enforcement system. Through further analysis, the data collected can help identify challenges and areas for further improvements within the disciplinary enforcement regime. On the one hand, this would contribute to the achievement of the expected outcomes foreseen under Action 2.4.2. of the ENIPC according to which "*Open databases on sanctions applied in the public sector disciplinary and sanctioning regime contribute to trend and risk analysis, as well as evidence-based decision making for corruption reduction*". On the other hand, it would enhance the MIDEPLAN's monitoring and oversight activities and the effectiveness of disciplinary proceedings.

Indeed, this type of data can be used to develop key performance indicators (KPIs) identifying bottlenecks and challenging areas throughout the procedures, but also setting measurable targets for achieving performance objectives. Several international organisations have developed relevant indicators (e.g. share of reported alleged offences taken forward, and average length of proceedings) for the justice system, which can be adapted to the needs and processes of the disciplinary system (Council of Europe, 2018[18])]. A similar approach is also followed in Costa Rica by Poder Judicial, which has established a Jurisdictional Statistics Consultation System (SIGMA). This system is used to extract statistics and risk areas to include them in the Annual Operating Plan (PAO), Specific Risk Assessment System (SEVRI) and Institutional Self-Evaluation Plan (PAI), as well as to provide adequate follow-up with monthly indicators that are reported to the Judiciary's Planning Office. The information is available on the Judicial Branch website,

including the goals implemented in the PAO and SEVRI. This practice can be adapted to be used for the processing of statistics regarding disciplinary cases within public entities.

Costa Rica could also consider making selected data publicly accessible in an interactive and user-friendly way (open data) enabling its re-use and further analysis. In this context, Costa Rica could consider the practice of Colombia, which elaborated corruption-related sanctions indicators, (Observatorio de Transparencia y Anticorrupción, 2020[19]) and Brazil, which periodically collects and publishes data on disciplinary sanctions in pdf and xls format (CGU, 2014[20]). Indeed, the publication of data on the application of the disciplinary regime across the Costa Rican public sector could be part of the ENIPC Action 2.3.2 for the development of a communication strategy on disciplinary policies and procedures, and their implementation.

The data collected can be used to inform integrity and anti-corruption policies. Moreover, they can help identify areas, sectors and patterns emerging from on-going investigations and sanctions imposed. More generally, data on disciplinary enforcement can be part of the broader monitoring and evaluation of the integrity system. Korea, for example, develops and takes into consideration for the monitoring and evaluation process two indexes related to both disciplinary and criminal corruption cases - the corrupt public official disciplinary index and the corruption case index – within the annual integrity assessment of public organisations (Anti-Corruption and Civil Rights Commission, 2022[21]). A similar broader monitoring and evaluating mandate can be assigned to the MIDEPLAN as part of its new oversight role over the Costa Rican public administration.

Proposals for action

The analysis of disciplinary enforcement mechanisms applicable in the Costa Rican public sector has shown that despite recent policy reforms, further efforts are required to improve their quality and ensure fairness of proceedings.

To do so Costa Rica could consider the following recommendations:

- Develop a set of common disciplinary rules to streamline its overall disciplinary framework across the public sector and ensure fairness, clarity and a coherent level of disciplinary accountability.
- Mandate the MIDEPLAN as the lead agency issuing overall disciplinary enforcement policies, including the development of centralised guidance to entities with technical support from the General Directorate of Civil Service.
- In addition, the chapter proposes the following measures to improve institutional coordination through the assignment of disciplinary responsibilities to specific agencies and functions within entities:
- Expand the disciplinary authority of the Supreme Electoral Tribunal to include the imposition of sanctions for corruption-related violations and establishing a comprehensive set of disciplinary rules for members of Parliament.
- Introduce criteria for assigning disciplinary responsibilities to a specific function within entities.
- Establish mechanisms and digital tools facilitating investigative co-ordination and co-operation between disciplinary bodies and other areas or actors in charge of administrative and criminal enforcement, in order to ensure swift access to critical information for the initiation or evidential support of proceedings.

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OECD Integrity Review of Costa Rica

SAFEGUARDING DEMOCRATIC ACHIEVEMENTS

Costa Rica is seeking to consolidate democratic gains to safeguard trust in government and build economic resilience. This Integrity Review looks at how Costa Rica can translate its recent National Strategy for Integrity and Prevention of Corruption into a concrete and coherent integrity policy. It also reviews the framework for managing conflict of interest and considers how best to address the lack of regulation on lobbying and promote integrity and transparency in all activities aimed at influencing public decision making. Finally, the Integrity Review analyses Costa Rica's disciplinary enforcement system, with a view to reinforcing the credibility and effectivity of its integrity policies.

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