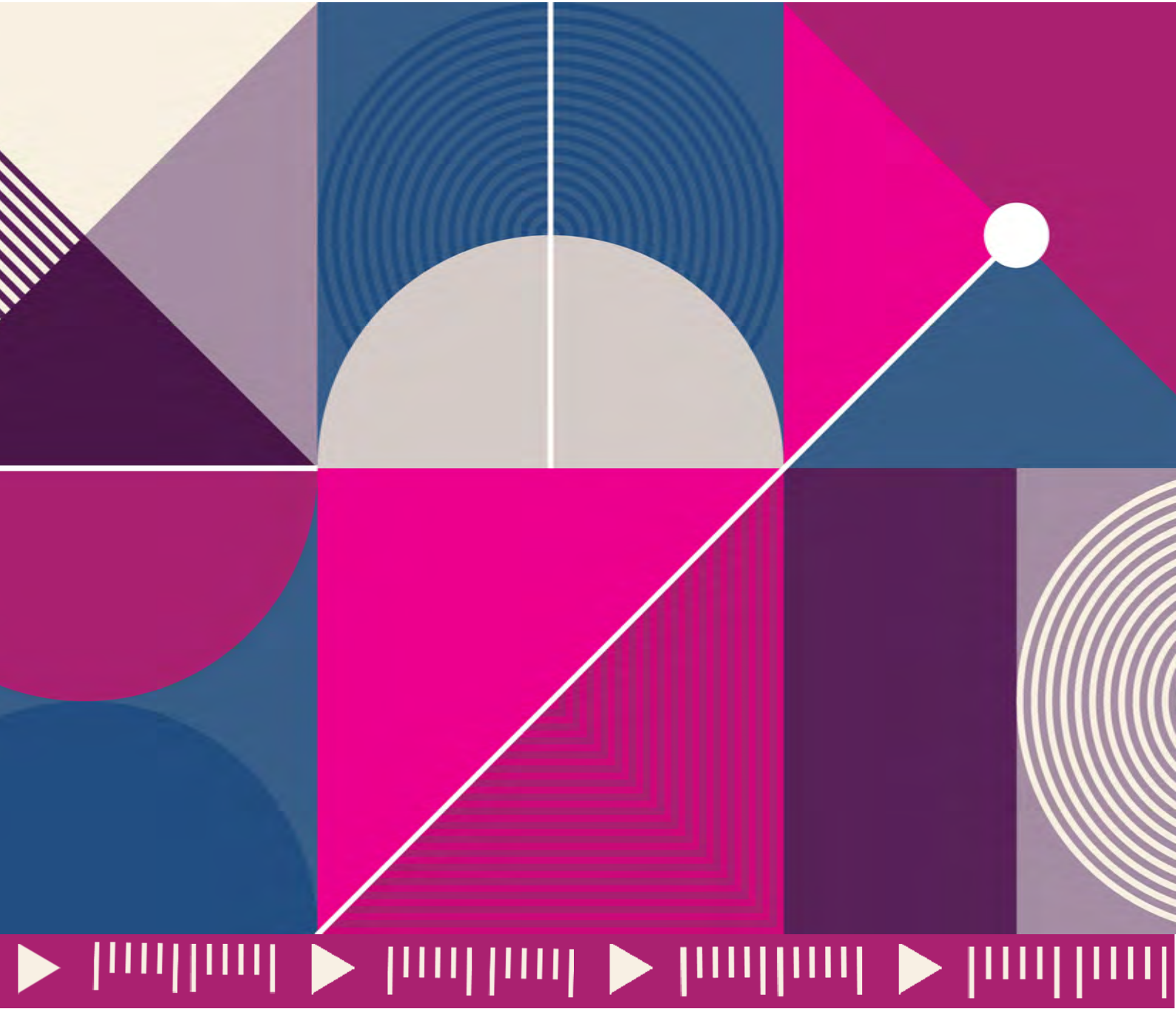




# Istanbul Anti-Corruption Action Plan 5th Round of Monitoring Guide



OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN)

# Istanbul Anti-Corruption Action Plan

## 5th Round of Monitoring

Guide



The ACN Secretariat prepared this Guide as a reference document for monitoring teams, National Coordinators and other stakeholders involved in the 5th Round of Monitoring under the Istanbul Anti-Corruption Action Plan (IAP). It supplements the Assessment Framework (monitoring methodology and performance indicators) to facilitate the interpretation and application of the benchmarks. The Guide does not set any mandatory requirements for the IAP 5th Round of Monitoring reviews beyond the benchmarks.

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## GENERAL DEFINITIONS

**“Clear criteria, grounds, or procedures”:** Criteria, grounds or procedures are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body.

**“Corruption offences”:** Criminal offences mentioned in Chapter III of the United Nations Convention against Corruption, namely bribery of national public officials, bribery of foreign public officials and officials of international public organizations, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions by a public official, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime.

**“Competitive procedures”:** Procedures are considered competitive when vacancies are advertised online, and any eligible candidate can apply.

**“Dedicated agency, unit or staff”:** An agency, a unit within the agency, or specialized staff that deals exclusively with certain function(s) and do not perform other duties.

**“High-level corruption”:** Corruption offences which meet one of the following criteria:

- A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories).
- B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to).

A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly statutory minimum wages (or the equivalent of the minimum wage if it is not applicable) fixed in the respective country on 1 January of the year for which data is provided.

**“High-level officials”:** The following appointed or elected officials:

- A. The President, members of Parliament, members of Government and their deputies;
- B. Heads of central executive bodies and other central public authorities and their deputies, members of collegiate central public authorities, including independent market regulators and supervisory authorities;
- C. Head and members of the board of the national bank, supreme audit institution;
- D. Judges of general courts and the constitutional court, prosecutors, members of the highest judicial or prosecutorial governance bodies (for example, a judicial or prosecutorial council);
- E. Regional governors or heads of regional administrations, capital city mayor;
- F. Ambassadors and heads of diplomatic missions;
- G. Any other public officials explicitly designated as politically exposed persons by the national anti-money laundering legislation.

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

**“Law”:** Primary law, not secondary legislation.

**“Legislation”:** Primary and secondary legislation.

**“Non-governmental stakeholders”:** Local and international NGOs, international organisations, private sector companies, and business associations, experts, academics.

**“Policy/policy documents”:** Anti-corruption strategy or action plan in force at the time of the monitoring. Other documents, even if they contain measures targeting corruption, will not be evaluated. If a country does not have a dedicated anti-corruption policy document and anti-corruption sections are included in other policy documents, the country will choose one document to be evaluated under PA 1.

**“Prosecutorial governance body”:** Prosecutorial Council or another body that is set up by the Constitution or law, is institutionally independent from the executive and legislative branch of government and not formally subordinated to the Prosecutor General, and has a mandate defined by the law. In this definition “not formally subordinated” means that the Prosecutor General or his/her deputies do not chair in the respective body, do not appoint or dismiss its members, do not approve its decisions or play a decisive role in its decision-making in another form, as well as have no authority to supervise or control its operation, and “mandate” means the authority to perform specific tasks.

**“Routinely”:** Applied or used systematically as a usual practice. The application or use is systematic when it includes at least 3 cases per year.

**“Regular/regularly”:** Taking place often or at uniform intervals. The benchmark may set specific intervals.

**“Transparent procedures”:** Procedures are considered transparent if the legislation regulates the main steps in the process and information about the outcomes of these steps is published online.

## PERFORMANCE AREA 1: ANTI-CORRUPTION POLICY

### Introduction

Evidence-based anti-corruption policy is essential for implementing anti-corruption reforms and sustaining their impact. Policy documents should be used as practical tools to set a clear roadmap for reforms, prioritize resources and incentivize performance by implementing agencies, engage public and raise awareness about achievements, challenges and impact of such reforms.

The UNCAC obliges the state parties to develop and implement effective, co-ordinated anti-corruption policies (Art. 5) and entrust coordination, implementation and monitoring to dedicated public bodies (art. 6). The 2017 OECD Recommendation of the Council on Public Sector Integrity emphasizes the importance of risk-based approach to public sector integrity policies and calls upon the states to “develop a strategic approach for the public sector that is based on evidence and aimed at mitigating public integrity risks.” The recommendation encourages countries to develop benchmarks and indicators and gather credible and relevant data on the level of implementation, performance and overall effectiveness of public integrity systems.

Anti-corruption policy has been in focus of the IAP monitoring since 2003. Throughout this period, policy planning has significantly improved in the IAP countries. The progress includes increased stakeholder engagement, better quality of policy documents with clearer objectives, more precise measures and timelines and strengthened monitoring mechanisms. Having regard to this progress, performance indicators for the 5th round of monitoring focus on practical application and effectiveness of anti-corruption policy as a tool to drive anti-corruption performance by addressing key corruption risk areas in a given country. The indicators promote measures that are still challenging in the region, such as using evidence as basis for policies, risk assessments, financial planning and reporting, regular monitoring and impact evaluation based on measurable indicators to ensure that anti-corruption policy is not a formalistic document, but a tool to steer anti-corruption reforms and boost performance.

If in the assessment period there is no anti-corruption policy document in force in the country, the indicators 1, 2 and 3 of this Performance Area will be considered not met and under these indicators country will score 0.

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. The anti-corruption policy is evidence-based and up-to-date	1.1. The following evidence has been used for developing objectives and measures of the policy documents, as reflected in the policy documents or their supporting materials:	Policy documents should be based on evidence that justify policy objectives and measures. It should be clear from the policy documents or supporting materials what evidence has been used.

	<ul style="list-style-type: none"> <li>A. Analysis of the implementation of the previous policy documents (if existed) or analysis of the corruption situation in the country;</li> <li>B. National or sectoral corruption risk assessments;</li> <li>C. Reports by state institutions, such as an anti-corruption agency, supreme audit institution, and law enforcement bodies;</li> <li>D. Research, analysis or assessments by non-governmental stakeholders, including international organisations;</li> <li>E. General population, business, employee, expert, or other surveys;</li> <li>F. Administrative or judicial statistics.</li> </ul>	<p>The monitoring team will review the policy documents or their supporting materials to conclude which of the listed sources of evidence (A to F) have been used for the development of the policy documents.</p> <p>Countries are encouraged to use as many of the evidence as possible. At the same time, where an element of this benchmark lists several sources of evidence using “or” (for example as in element A), one of the listed is sufficient to comply with the element of the benchmark.</p> <p>Country will receive a score for the element A, if either one of the evidence sources mentioned in the element has been used.</p> <p>Corruption risk assessment is an important source of information for evidence-based policy. Countries are encouraged to address both national and sector-specific risks (in tax, customs, health etc.) as needed, but existence of one of these will be sufficient to score under element B. The application of a national risk assessment according to the pre-determined methodology is encouraged but is not required.</p> <p>The element E will be met if at least one of the listed surveys have been used.</p> <p>For element F, administrative or judicial statistics are required for the element to be met.</p> <p>Each element (A-F) is scored separately (scoring method 1).</p>
	<p>1.2. The action plan is adopted or amended at least every three years.</p>	<p>Policy documents should be practical living instruments for implementation of anti-corruption reforms. They should be regularly reviewed and updated. This benchmark requires that the anti-corruption action plan is adopted or amended at least every three years. The country will be compliant if its action plan is in force and dates back less than three years at the time of the review.</p>
	<p>1.3. Policy documents include:</p> <ul style="list-style-type: none"> <li>A. Objectives, measures with implementation deadlines and responsible agencies;</li> </ul>	<p>This benchmark requires that selected characteristics of policy documents are in place.</p>



- B. Outcome indicators;
- C. Impact indicators;
- D. Estimated budget;
- E. Source of funding.

The action plan should contain objectives, measures, implementation deadlines and responsible agencies in order to score under element A. These components are grouped as one element, since they are basic requirements of an action plan.

The monitoring team will review the indicators of the policy document(s) to determine if they qualify as outcome indicators. "Outcome" means short or medium term effect/result of carried out measures, clearly linked to a given objective of the strategy. Outcome indicators can be quantitative or qualitative, such as number of whistleblower reports, percentage of competitive procurement, etc. Outcome indicators should not be defined for each measure, but for objectives/results.

The monitoring team will review the indicators of the policy document(s) to determine if they qualify as impact indicators. "Impact indicators" show long-term effect of policy intervention. Such indicators can be, for example: changes in attitudes and trust towards the government, changes in the levels of corruption, changes in social and economic conditions, and improvements in the quality of life.

Financial planning is an essential part of a public policy cycle. The estimation of the required budget should be carried out as a part of the planning when elaborating an action plan. If the time-frame of an action plan is long, which may make budget estimations difficult, the estimation should be done at least on yearly basis.

Together with estimates, source of funding (state budget or donor funding required) should be identified and included in policy document(s). This is important especially to situations when state budget does not cover all activities of the action plan and donor funding had to be secured. Clearly marking these activities at the planning stage will help ensure that government allocates necessary funding for implementation, if measures are not funded by state budget, it will help donors mobilise and coordinate their assistance.

		Each element (A-E) is scored separately (scoring method 1).
2. The anti-corruption policy development is inclusive and transparent	<p>2.1. The following is published online:</p> <ul style="list-style-type: none"> <li>A. Drafts of policy documents;</li> <li>B. Adopted policy documents.</li> </ul> <p>2.2. Public consultations are held on draft policy documents:</p> <ul style="list-style-type: none"> <li>A. With sufficient time for feedback (no less than two weeks after publication);</li> <li>B. Before adoption, the government provides an explanation regarding the comments that have not been included;</li> <li>C. An explanation of the comments that have not been included is published online.</li> </ul>	<p>This indicator promotes inclusive, participatory and transparent development of anti-corruption policies. To meet this benchmark, the listed documents should be published and remain online for unrestricted public access, without technical barriers. The Government or other state authorities in charge of the policy are encouraged to announce such publication in a way that is visible and widely disseminated.</p> <p>The element requires that the draft of the policy document in force during the assessment period had been published, irrespective of whether the document was published within the assessment period or not.</p> <p>Each element (A-B) is scored separately (scoring method 1).</p> <p>The country should organize public consultations, a series of discussions involving diverse group of stakeholders, aimed at discussing the draft policy documents and receiving feedback. The form of consultations can be different – roundtable discussions, virtual discussions, written consultations, platforms of online consultations, etc. It is important, however, that the consultations are not a formal exercise, but a meaningful process with due time and consideration given to the received proposals.</p> <p>This benchmark covers both strategy and action plan, which means that its elements will be applied to both.</p> <p>The benchmark requires public consultations about strategy and action plan in force during the assessment period, irrespective of whether public consultations took place within the assessment period or not.</p> <p>Draft policy documents should be made available for public consultations at least two weeks in advance to allow the time to prepare feedback.</p> <p>Government should give due consideration to the received comments and proposals. An explanation should be prepared reflecting comments received and feedback on why specific comments have not been included.</p>

		<p>If such explanation has not been published, the monitoring team will rely on the inputs of relevant non-governmental stakeholders along with the information received from Government to determine compliance with element B.</p> <p>For element C to be met, a written explanation should be published online.</p> <p>Each element (A-C) is scored separately (scoring method 1).</p>
<p>3. The anti-corruption policy is effectively implemented</p>	<p>3.1. Measures planned for the previous year were fully implemented according to the government reports.</p> <p><i>Note: The country's score for this benchmark will equal the percentage of measures planned for the respective year that were fully implemented, according to the government reports (scoring method 3). For example, if 70% of the measures planned for the previous year were fully implemented, the country would receive 70% of the maximum score possible under this benchmark.</i></p>	<p>The aim of this benchmark is to promote effective implementation of the commitments made by state bodies reflected in the anti-corruption policy documents (strategies and action plans) and realistic planning at the beginning of the policy cycle. The benchmark encourages state bodies to commit to measures that are enforceable in a given period with available resources. By requiring reporting on this issue, the benchmark also promotes regular monitoring of implementation.</p> <p>The source of data for this benchmark is the percentage of implementation according to government reports only. While comments from non-governmental stakeholders, challenging the percentage of implementation will be noted and reflected in the assessment, they will not affect the score.</p> <p>The monitoring team will look into the percentage of implementation in the year proceeding the monitoring. Percentage of implementation refers to measures that were planned for the reporting period only, not for the full duration of the policy document.</p>
	<p>3.2. Anti-corruption measures unimplemented due to the lack of funds do not exceed 10% of all measures planned for the reporting period.</p>	<p>This benchmark provides an additional check to proper financial planning and ensuring implementation of anti-corruption policy. The assessment will rely on the information provided by both Government and non-governmental stakeholders. If more than 10% of the measures included in the anti-corruption policy document were not implemented in the previous calendar year due to the lack of funding, the benchmark will not be met.</p>

<p>4. Coordination, monitoring and evaluation of anti-corruption policy is ensured</p>	<p>4.1. Coordination and monitoring functions are ensured:</p> <ul style="list-style-type: none"> <li>A. Coordination and monitoring functions are assigned to dedicated staff (secretariat) at the central level by a normative act, and the staff is in place;</li> <li>B. The dedicated staff (secretariat) has powers to request and obtain information, to require participation in the convened coordination meetings, to require submission of the reports of implementation;</li> <li>C. Dedicated staff (secretariat) has resources necessary to conduct respective functions;</li> <li>D. Dedicated staff (secretariat) routinely provides implementing agencies with methodological guidance or practical advice to support policy implementation.</li> </ul>	<p>This benchmark assesses whether coordination and monitoring functions are assigned by legislation and ensured in practice. Focusing on functions, it does not require a specialised body. Various institutional models (ranging from independent bodies to units or persons) can meet the benchmark if its specific elements are met.</p> <p><b>“Coordination”</b> means an organised inter-agency work aimed at effective policy implementation. It implies a certain established procedures and practices of interacting and joint work to deliver the planned results.</p> <p><b>“Monitoring”</b> means a continuous process of data gathering and analysis to determine progress in meeting policy objectives and achieving intended results for the purposes of improving performance and/or accountability.</p> <p><b>“Dedicated staff (secretariat)”</b> means that relevant officials deal exclusively with the coordination and monitoring of implementation of anti-corruption policy and do not perform other duties.</p> <p>Coordination and monitoring of anti-corruption policies should be assigned to dedicated staff at the central level of the Government by a normative act, the staff should be in place and operational. The monitoring team will review available documents to assess assigned functions and division of responsibilities of the relevant staff to determine whether the staff is “dedicated”.</p> <p>Legislation should provide that the dedicated staff (secretariat) dealing with the coordination and monitoring of implementation of anti-corruption policy have powers to carry out such duties. Powers of the dedicated staff may include convening regular and ad hoc meetings, obliging state bodies to report on implementation, providing methodological guidance, issuing recommendations, etc. For the purposes of scoring under this element, only the powers listed in the element B will be assessed by the monitoring team. If all the listed powers are clearly spelled out in the legislation, this element B will be met.</p>
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		<p>The staff should have resources to apply the powers listed in element B in practice. Availability of necessary resources will be assessed in the country context considering the workload, number of agencies involved in implementation, procedures set for monitoring and coordination, daily activities, responsibilities and tasks of the related staff, etc.</p> <p>“Dedicated staff” should provide methodological guidance or practical advice to the implementing agencies. Methodological guidance means general clarifications of certain legal requirements or procedures applicable to all respective implementing agencies and their focal points. Practical advice means advice or consultation provided by the central coordinating body/unit (secretariat) in individual cases on request. Guidance and advice can be provided in different forms: in writing, through telephone consultations or visits, trainings, visual aids, guidance materials, etc. If country provides an evidence (examples) of three specific instances when it provided methodological guidance or practical advice, the element D will met.</p> <p>Each element (A-D) is scored separately (scoring method 1).</p>
	<p>4.2. Monitoring of policy implementation is ensured in practice:</p> <ul style="list-style-type: none"> <li>A. A monitoring report is prepared once a year;</li> <li>B. A monitoring report is based on outcome indicators;</li> <li>C. A monitoring report includes information on the amount of funding spent to implement policy measures;</li> <li>D. A monitoring report is published online.</li> </ul>	<p>This benchmark assesses whether the monitoring of policy implementation is carried out in practice. The monitoring team will check whether the monitoring report was prepared in the assessment period (that is the year preceding the monitoring on-site visit) and whether it complied with requirements in Elements B-D. If there was no monitoring report in the assessment period, then all elements are scored as 0.</p> <p>The government should demonstrate that the monitoring reports are prepared annually, at least one monitoring report per year. The monitoring team will check whether in the assessment period (that is the year preceding the monitoring on-site visit) there was a monitoring report for policy implementation, which will be sufficient for compliance.</p> <p>Governments should track progress achieved against indicators set out in the policy documents. The monitoring team will review the latest</p>

		<p>monitoring report, to check that such indicators are in place and applied in practice to monitor implementation. The monitoring team will analyse the indicators to conclude whether they are outcome indicators or not. “Outcome” means short or medium term effect/result of carried out measures, clearly linked to a given objective of the strategy. Outcome indicators can be quantitative or qualitative, such as number of whistleblower reports, percentage of competitive procurement, etc.</p> <p>Element C aims to encourage financial planning and reporting for anti-corruption policy by checking whether implementation reports available to the public include information on budget spent on implementation of anti-corruption policy measures.</p> <p>“Published online” means that reports are published online, are visible for the general public and accessible without technical barriers.</p> <p>Each element (A-D) is scored separately (scoring method 1).</p>
	<p>4.3. Evaluation of the policy implementation is ensured in practice:</p> <ul style="list-style-type: none"> <li>A. An evaluation report is prepared at least at the end of each policy cycle;</li> <li>B. An evaluation report is based on impact indicators;</li> <li>C. An evaluation report is published online.</li> </ul>	<p>Governments should regularly evaluate effectiveness and impact of their policies and use impact indicators to set targets and measure the results of implementation. “Impact indicators” show long-term effect of policy intervention. Such indicators can be, for example: changes in attitudes and trust towards the government, changes in the levels of corruption, changes in social and economic conditions, and improvements in the quality of life. Governments are encouraged to use not only administrative data but also surveys (general public, focus groups, staff surveys to measure perception and experience of corruption, trust towards institutions) in assessing the impact of their policies.</p> <p>The element A requires that evaluation reports are produced at the end of each policy cycle. This means that the monitoring will assess if the evaluation of the previous policy document has been carried out, or not. Previous policy document means the policy document for the policy cycle preceding the policy documents in force in the assessment period. If no policy documents are in force during the assessment period, then the</p>

		<p>benchmark will look into the evaluation report of the last policy document. Thus the monitoring team will review the latest evaluation report to assess compliance with the elements of this benchmark.</p> <p>To assess element B, the monitoring team will review the report to assess if it is based on the impact indicators. Impact indicators are defined above in benchmark 1.3.</p> <p>"Published online" means that the last evaluation report is published online, is visible for the general public and accessible without technical barriers.</p> <p>Each element (A-C) is scored separately (scoring method 1).</p>
	<p>4.4. Non-governmental stakeholders are engaged in the monitoring and evaluation:</p> <ul style="list-style-type: none"> <li>A. Non-governmental stakeholders are invited to regular coordination meetings where the monitoring of the progress of the policy implementation is discussed;</li> <li>B. A monitoring report reflects written contributions of non-governmental stakeholders;</li> <li>C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders.</li> </ul>	<p>This benchmark promotes participation of non-governmental stakeholders in monitoring and evaluation of anti-corruption policies. Such involvement may take various forms: participation in regular coordination meetings where the progress reports and outcomes of the policy implementation are discussed; written contribution to the government reports; consideration of shadow reports prepared by stakeholders or any other format that shows regular and systematic participation.</p> <p>Engagement of stakeholders should be inclusive. To conclude compliance with this element, the monitoring team will assess if all stakeholder that have requested inclusion have been included or not based on various evidence collected during the monitoring, including questionnaire, on-site visit and desk research. This also applies to written contributions to monitoring and evaluation reports.</p> <p>If non-governmental stakeholders did not make written contributions to the latest monitoring report, the element is considered not applicable. If there was no monitoring report in the in the assessment year, then the element B is scored as 0.</p> <p>If non-governmental stakeholders did not conduct an assessment of the policy implementation or it was not publicly available when the evaluation</p>

report was prepared, the element is considered not applicable. If there was no evaluation report after the end of the previous policy document, then the element is scored as 0.

Each element (A-C) is scored separately (scoring method 1).

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## PERFORMANCE AREA 2: CONFLICT OF INTERESTS AND ASSET DECLARATIONS

### Introduction

Preventing and managing **conflict of interest** (COI) is key to promoting integrity in the public service. If not properly managed, conflict of interest may lead to corruption and corrode public trust in government. Unresolved conflicts of interest can result in violations such as nepotism, abuse of power, failure to perform duties, misappropriation, bribery or other serious crimes. International standards (UNCAC, Council of Europe, OECD documents) recommend states to put in place measures for disclosing, managing and resolving conflict of interests.

The OECD Guidelines for Managing Conflict of Interest in the Public Service identify a set of core principles and standards for designing and implementing conflict of interest policies. These include definitions of actual, apparent and potential conflict of interest and guidance on declaring, managing and resolving them, as well as on oversight and enforcement, providing training, counselling and raising awareness. Other OECD knowledge products, such as a toolkit and reports on implementation, provide examples of good practices and instruments for policymakers and managers in the public sector.

Conflict of interest stands for a conflict between public duty and private interests of a public official that could improperly influence the performance of official duties and responsibilities. In this performance area other COI restrictions refers to gifts, incompatibilities, requirements to transfer ownership rights in businesses and post-employment restrictions. Indicator 1 concerns prevention and management of ad hoc conflict of interest and does not extend to other COI-related restrictions mentioned above.

**Asset and interest declarations** are widely used to build integrity and ensure accountability of public officials. Disclosure of assets, income, liabilities, expenses and interests is a useful tool to prevent and manage conflict of interests, control wealth of public officials, enforce rules on gifts, incompatibilities, post-employment and other anti-corruption restrictions. Declaration systems vary in the scope of information they require and reach within the public administration, their transparency and sophistication.

The UN Convention against Corruption (Art. 8) stipulates that each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Experience of countries in the ACN region and globally shows that more and more countries introduce digital and online solutions to collect, publish, analyse and verify asset and interest declarations, use analytical tools to review declarations, cross-check them with other sources and find inconsistencies. Systems in most countries combine multiple objectives, including detection and prevention of conflict of interest, illicit enrichment, other corruption related violations.

Asset and interest declaration systems that provide for a high level of public disclosure have a spill-over effect and promote civil society watchdog activities, digital governance reforms and anti-money laundering compliance.

The IAP monitoring benchmarks are based on the international and regional instruments establishing standards in this area. The benchmarks also take into account previous monitoring round reports of IAP and the IAP Summary Report for 2016-2019 which has summarized relevant recommendations, as well evaluation reports under other monitoring mechanisms (GRECO, UNCAC).

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
<p>1. An effective legal framework for managing conflict of interest is in place</p>	<p>1.1. The legislation extends to and includes a definition of the following concepts applicable to public officials, in line with international standards:</p> <ul style="list-style-type: none"> <li>A. Actual and potential conflict of interest;</li> <li>B. Private interests that include any pecuniary and non-pecuniary advantage to the official, his or her family, close relatives, friends, other persons or organisations with whom the official has personal, political or other associations;</li> <li>C. An apparent conflict of interest.</li> </ul>	<p>The legislation should provide the definition of the key conflict of interest (COI) concepts applicable to public officials, namely actual COI, potential COI, apparent COI, and private interests. The COI legislation should extend its regulation to all these concepts.</p> <p>The definitions in the national legislation should comply with the international definitions or be functionally equivalent to them (that is when the legislation does not use the exact same wording but reaches the same objectives, performs the same function).</p> <p>The following definitions will be used as references for international standards.</p> <p>OECD definitions:</p> <p><u>Actual COI</u>  “10. [...] involves 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. [...]</p> <p><u>Potential COI</u>  12. [...] A potential conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.</p> <p><u>Apparent COI</u>  12. [...] an apparent conflict of interest can be said to exist where it appears that a public official’s private interests could improperly influence the performance of their duties but this is not in fact the case. [...]</p> <p>Private interest</p>

		<p>14. [...] 'private interests' are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the official's performance of their duties. A special case is constituted by the matter of post-public office employment for a public official: the negotiation of future employment by a public official prior to leaving public office is widely regarded as a conflict of interest situation.”</p> <p><i>OECD (2003), Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service.</i></p> <p>Council of Europe</p> <p>Model Code of Conduct for Public Officials (Article 13):</p> <p>“The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.”</p> <p>Each element (A-C) is scored separately.</p>
	<p>1.2. The legislation assigns the following roles and responsibilities for preventing and managing ad hoc conflict of interest:</p> <ul style="list-style-type: none"> <li>A. Duty of an official to report COI that emerged or may emerge;</li> <li>B. Duty of an official to abstain from decision-making until the COI is resolved;</li> <li>C. Duties of the managers and dedicated bodies/units to resolve COI reported or detected through other means.</li> </ul>	<p>The benchmark includes minimum requirements for the roles and responsibilities related to the COI management. Elements A and B concern the duties of an official regarding a potential, actual or apparent (if covered by the legislation) COI.</p> <p>Element C concerns duties of managers (supervisors of officials, leadership of public authorities) and special authorities (for example, an anti-corruption agency or anti-corruption units within authorities) to react to the COI which was reported to them or which they uncovered through other means (for example, an external complaint, open sources). If there is no dedicated body or unit for COI management, the monitoring will review duties of the managers only.</p>

		Each element (A-C) is scored separately.
	<p>1.3. The legislation provides for the following methods of resolving ad hoc conflict of interest:</p> <ul style="list-style-type: none"> <li>A. Divestment or liquidation of the asset-related interest by the public official;</li> <li>B. Resignation of the public official from the conflicting private-capacity position or function, or removal of private interest in another way;</li> <li>C. Recusal of the public official from involvement in an affected decision-making process;</li> <li>D. Restriction of the affected public official's access to particular information;</li> <li>E. Transfer of the public official to duty in a non-conflicting position;</li> <li>F. Re-arrangement of the public official's duties and responsibilities;</li> <li>G. Performance of duties under external supervision;</li> <li>H. Resignation/dismissal of the public official from their public office.</li> </ul>	<p>The benchmark requires that the legislation envisages procedures for management of ad hoc conflict of interest. Management of ad hoc COI means the steps and procedures for officials, their immediate superiors, leadership of the agency, dedicated COI body/unit (if exists) to take measures for preventing and resolving COI.</p> <p>The monitoring team will not examine in detail such procedures against any specific standards but will check if they are clearly stipulated in the legislation and enforceable, that is that there are rules regulating the grounds for using a certain COI resolution method and assigning respective duties to specific actors.</p> <p>The list of COI resolution methods is based on the Recommendation of the OECD Council on Guidelines for Managing Conflict of Interest in the Public Service.</p> <p>Each element (A-H) is scored separately.</p>
	<p>1.4. The legislation provides for the following methods of resolving ad hoc conflict of interest:</p> <ul style="list-style-type: none"> <li>A. Specific methods for resolving conflict of interest in the collegiate (collective) state bodies;</li> <li>B. Specific methods for resolving conflict of interest for top officials who have no direct superiors.</li> </ul>	<p>The legislation should provide special methods of ad hoc COI resolution adjusted to the relevant situations, namely when a COI emerges with a member of a collective (collegiate) body, like a commission, committee, any other state authority comprising several members, and when the official (for example, President, Prime Minister, minister or head of state authority) does not have direct superiors who can resolve the conflict of interest. The legislation may contain general rules applicable to such situations or provide specific rules for each collective body or top official without a direct superior.</p> <p>Each element (A-B) is scored separately.</p>

	<p>1.5. There are special conflict of interest regulations or official guidelines for:</p> <ul style="list-style-type: none"> <li>A. Judges;</li> <li>B. Prosecutors;</li> <li>C. Members of Parliament;</li> <li>D. Members of Government;</li> <li>E. Members of local and regional representative bodies (councils).</li> </ul>	<p>While some general COI rules required in benchmarks 1.1-1.3. may be applicable to all public officials, different regulations are necessary for specific categories to reflect their special status and functions. This benchmark focuses on such special regulations.</p> <p>There should be special regulations or guidelines for the listed categories. The guidelines can be of recommendatory nature but should be official, that is issued by a public authority that has a legal mandate to issue them.</p> <p>The monitoring will not analyse in detail all relevant procedures or guidelines but will check that they exist and provide for meaningful special rules/recommendations adjusted to the relevant categories of officials and COI situations that may arise in their work. If the special regulations or guidelines duplicate the general legislative provisions on COI management, it will not be sufficient.</p> <p>Each element (A-E) is scored separately.</p>
<p>2. Regulations on conflict of interest are properly enforced</p>	<p>2.1. Sanctions are routinely imposed on public officials for the following violations:</p> <ul style="list-style-type: none"> <li>A. Failure to report an ad hoc conflict of interest;</li> <li>B. Failure to resolve an ad hoc conflict of interest</li> <li>C. Violation of restrictions related to gifts or hospitality;</li> <li>D. Violation of incompatibilities;</li> <li>E. Violation of post-employment restrictions.</li> </ul>	<p>According to the general definitions, “<b>routinely imposed</b>” means “applied or used systematically as a usual practice. The application or use is systematic when it includes at least 3 cases per year.” For each element (A-E) of the benchmark, the country will need to provide at least 3 cases of sanctions imposed on public officials for the specific violations mentioned in the element.</p> <p>The benchmark aims to reflect the enforcement practice, namely that the respective provisions are applied in practice. It assumes that the respective offences are provided in the national law as such provisions are considered important for an effective COI enforcement system. It means that if the national law does not provide for one of the offences mentioned in the elements A-E (and, therefore, there were no sanctions imposed), the element is scored 0 (the country is not compliant).</p> <p>The monitoring team will not check the quality of the offences or effectiveness of sanctions imposed. The benchmark does not require a specific type of liability (for example, administrative or criminal).</p>

		<p><b>“Sanctions imposed”</b> means the decision to apply sanction made by the final decision-making body. For example, if an administrative body (for example, an anti-corruption agency) must detect the offence, collect and record evidence and then present the case to court for imposing a sanction, the benchmark takes into account the court decision, not of the administrative agency. The first instance court decision is sufficient in this situation. For criminal offences, the benchmark takes into account the first instance court sentences, not the suspicion or charges brought by the investigative authority or prosecutor.</p> <p>Each element (A-E) is scored separately.</p>
	<p>2.2. Sanctions are routinely imposed on high-level officials for the following violations:</p> <ul style="list-style-type: none"> <li>A. Violation of legislation on prevention and resolution of ad hoc conflict of interest;</li> <li>B. Violation of restrictions related to gifts or hospitality;</li> <li>C. Violation of incompatibilities;</li> <li>D. Violations related to requirements of divesting ownership rights in commercial entities or other business interests;</li> <li>E. Violation of post-employment restrictions.</li> </ul>	<p>This benchmark looks into enforcement practice related to sanctions imposed on high-level officials. The term “high-level officials” is explained in the general definitions.</p> <p><b>“Violation of legislation on prevention and resolution of ad hoc conflict of interest”</b> means a broad category that can include any offence related to the prevention and resolution of ad hoc conflict of interest that exists in the country, for example failure to report COI, failure to resolve a COI reported to the manager, failure to implement instructions given to the official by the manager or anti-corruption agency concerning how to resolve a COI.</p> <p>Comments to benchmark 2.1. apply here as well.</p> <p>Each element (A-E) is scored separately.</p>
	<p>2.3. The following measures are routinely applied:</p> <ul style="list-style-type: none"> <li>A. Invalidated decisions or contracts as a result of a violation of conflict-of-interest regulations;</li> <li>B. Confiscated illegal gifts or their value;</li> <li>C. Revoked employment or other contracts of former public officials concluded in violation of post-employment restrictions.</li> </ul>	<p><b>“Invalidated decision or contracts”</b> mean administrative decisions or contracts entered into by public authorities which the court or another authority invalidated (revoked) because they were adopted or concluded in the situation of COI or in violation of other COI rules.</p> <p><b>“Illegal gifts”</b> stands for gifts that are prohibited or restricted by law and are received by public officials. The confiscation can be of any type (for example, criminal, administrative, or civil).</p> <p>Comments to benchmark 2.1. apply here as well.</p> <p>Each element (A-C) is scored separately.</p>

<p>3. Asset and interest declarations apply to high corruption risk public officials, have a broad scope and are transparent for the public and digitized</p>	<p>3.1. The following officials are required to declare their assets and interests annually:</p> <ul style="list-style-type: none"> <li>A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies;</li> <li>B. Members of collegiate central public authorities, including independent market regulators and supervisory authorities;</li> <li>C. Head and members of the board of the national bank, supreme audit institution;</li> <li>D. The staff of private offices of political officials (such as advisors and assistants);</li> <li>E. Regional governors, mayors of cities;</li> <li>F. Judges of general courts, judges of the constitutional court, members of the judicial governance bodies;</li> <li>G. Prosecutors, members of the prosecutorial governance bodies;</li> <li>H. Top executives of SOEs.</li> </ul>	<p>The scope of the asset and interest declaration system should be balanced and sufficient to reach objectives of the system. The benchmark sets the minimum requirements for the scope of declarants required to file declarations. The asset and interest declarations should cover top public officials who need to set the tone for the integrity and accountability of the public service and who are susceptible to high risks of corruption or conflict of interest.</p> <p><b>“Members of collegiate central public authorities, including independent market regulators and supervisory authorities”</b> means members or board members of collective bodies with a mandate to regulate or supervise certain sectors of economy or markets (for example, utilities, energy, securities and stock exchange, financial institutions) or any other collegiate public authorities with the national jurisdiction (for example, the Central Election Commission).</p> <p><b>“Head and members of the board of the national bank, supreme audit institution”</b> means the National Bank’s governor or head, members of the National Bank’s supervisory or executive board, head of the supreme audit institution (for example, head of the Accounting Chamber) or members of the supreme audit institution if it is a collective body.</p> <p><b>“Staff of private offices of political officials”</b> means political advisors or assistants to officials holding political offices. Political offices mean national offices elected directly by the people (e.g. the President, members of Parliament) and members of the Government appointed by the Parliament/President. Advisors/assistants to the local elected officials (mayors, local or regional councilmen) are not covered by the definition of “Staff of private offices of political officials” for the purpose of this benchmark, unless such officials also hold a national political office.</p> <p><b>“Regional governors”</b> mean governors or heads of regional (not local) state administrations or similar authorities appointed by the central state authorities; it does not extend to local self-government officials. <b>“Mayors of cities”</b> covers elected mayors (or their equivalents, for example, chairs of municipal councils) of all cities regardless of their size.</p>
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	<p>3.2. The legislation or official guidelines require the disclosure in the declarations of the following items:</p> <ul style="list-style-type: none"> <li>A. Immovable property, vehicles and other movable assets located domestically or abroad;</li> <li>B. Income including its source;</li> <li>C. Gifts including in-kind gifts and payment for services and indicating the gift’s source;</li> <li>D. Shares in companies, securities;</li> <li>E. Bank accounts;</li> </ul>	<p>Information which declarants must disclose (include) in the declaration form should be sufficiently broad to reach objectives of detecting conflict of interests and illicit enrichment (unjustified variations of wealth). The benchmark sets minimum requirements to the scope of information required in the declaration form. Benchmarks 3.3.-3.4. concerning the scope of disclosure provide additional points for countries which make other type of information mandatory for disclosure.</p> <p>The legislation or official guidelines should explicitly mention the items that must be declared according to this benchmark. <b>Official guidelines</b> may not be a legally binding document (a normative act) but should be issued by a state authority that has a mandate to issue such guidelines for declarants.</p>



- F. Cash inside and outside of financial institutions, personal loans given;
- G. Financial liabilities, including private loans;
- H. Outside employment or activity (paid or unpaid);
- I. Membership in organizations or their bodies.

*Note: The disclosure of the above items may be conditional on reaching a certain value threshold.*

Official guidelines could also mean court case-law that supports in practice relevant interpretation of the legislative provisions.

**“Other moveable assets”** include any valuable property, other than real estate and vehicles, including jewellery, art, antique, precious stones.

**“Vehicles”** means any means of transportation, for example, a car, boat, plane, agriculture or construction machinery.

**“Income including its source”** means any type of income, whether taxable or not, active or passive income, received from any source. The source of income means a natural or legal person who paid income to the declarant or family member. Information on the source should include sufficient details to identify relevant person.

**Gifts** may be covered as a part of income or as a separate declarable item. If covered as a part of income, the form should clearly indicate that it is a gift. A gift should be understood broadly as any tangible or intangible asset or benefit received free of charge or below minimum market price, including in-kind gifts, payment for services obtained by the declarant or family member (e.g. sponsored travel, accommodation, healthcare, education, etc.). The source of gift should be indicated in the form.

**“Shares in companies”** means stocks or other types of shares in corporate entities (joint stock companies, limited liability companies, any partnerships limited by shares).

Disclosure of **bank accounts** means that the form should ask for information on bank accounts owned or controlled by the declarant regardless of the account’s type or its balance. This includes accounts opened in banks abroad and information on the bank, currency of the account.

**“Cash inside and outside of financial institutions”** means any monetary funds held in the banking or non-banking financial institution (for example, a credit union, investment fund), as well as cash held outside of such institution, including money which the declarant lent to other persons (personal loans in which declarant is a creditor).

		<p><b>“Financial liabilities including private loans”</b> means any financial liability in which the declarant is a debtor, including loans received from other individuals or legal entities.</p> <p><b>“Outside employment or activity, paid or unpaid activity”</b> means any employment, permanent or temporary, professional or other activity, paid or not paid, undertaken by the declarant outside of the main public office, with the details on the employer (if applicable).</p> <p><b>“Membership in organizations or their bodies”</b> means membership in any type of organization (profit or non-profit) and membership in the bodies (executive, supervisory, auditing) of such organization. The form may not require disclosure of membership in the general assembly of the organization if it is automatic due to being the organization’s member.</p> <p>The national legislation may set a value threshold for disclosing certain assets and interests (for example, the minimum value of the movable property that should be disclosed).</p> <p>Each element (A-I) is scored separately.</p>
	<p>3.3. The legislation or official guidelines contain a definition and require the disclosure in the declarations of the following items:</p> <ul style="list-style-type: none"> <li>A. Beneficial ownership (control) of companies, as understood in FATF standards, domestically and abroad (at least for all declarants mentioned in Benchmark 3.1.), including identification details of the company and the nature and extent of the beneficial interest held;</li> <li>B. Indirect control (beneficial ownership) of assets other than companies (at least for all declarants mentioned in Benchmark 3.1.), including details of the nominal owner of the respective asset, description of the asset, its value;</li> </ul>	<p>See explanation of the “official guidelines” and “disclosure threshold” in the guide to benchmark 3.2.</p> <p>The national legislation or official guidelines should define the concepts required in the benchmark (beneficial ownership in companies, beneficial ownership in assets, expenditures, trusts, virtual assets). It can be, for example, a special definition contained in the asset declaration law, a definition in the anti-money laundering law, law on company registration, another law or bylaw, or official guidelines to them. If the definition is included in the document that primarily regulates other issues (for example, anti-money laundering law), there should be a clear reference that this definition applies to the asset declarations.</p> <p><b>Beneficial ownership of companies.</b> The benchmark requires disclosure in the declaration form of companies, registered domestically or abroad, in which the declarant has beneficial ownership or ultimate control. Such a requirement helps to track the declarant’s wealth and uncover interests</p>

- C. Expenditures, including date and amount of the expenditure;
- D. Trusts to which a declarant or a family member has any relation, including the name and country of trust, identification details of the trust's settlor, trustees, and beneficiaries;
- E. Virtual assets (for example, cryptocurrencies), including the type and name of the virtual asset, the amount of relevant tokens (units) and the date of acquisition.

*Note: The disclosure of the above items may be conditional on reaching a certain threshold.*

which would not be seen if the form required disclosure only of the direct ownership of companies.

Definition of beneficial ownership in companies should comply with the minimum requirements set in international standards (FATF definition): the definition captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement through direct or indirect ownership of at least 25 % of the shares or voting rights or ownership interest in that entity or through control via other means.

In relation to the element A while universal coverage is encouraged, if such a requirement covers only declarations of declarants in high-risk positions (those covered in benchmark 3.1.) it would be enough for the country to comply with the element of the benchmark.

The declaration form should ask for details sufficient to identify the company (for example, name, country of registration, registration or other identification number) and the nature and extent of beneficial ownership (for example, whether the beneficial interest is based on the ownership of shares, control of shareholders or other type of control).

**Indirect control (beneficial ownership) of assets.** Public officials who wish to hide their ill-gotten gains often use proxies to assign their assets. Such proxies may be relatives, other individuals, or legal entities. The declaration form that requires disclosure only of the formal ownership in assets creates a loophole that can be used to hide unjustified assets.

The benchmark requires disclosure in the declaration form of assets which the declarant owns or controls in a way other than through formal ownership. This covers situations when the asset belongs to a third person (a nominal owner, a trust) but the declarant obtains income from the asset or can decide to dispose of the asset. Such a relation to the asset may be called in the national law beneficial ownership, indirect control or otherwise.

While universal coverage is encouraged, if such a requirement covers only declarations of declarants in high-risk positions (those covered in

benchmark 3.1.) it would be enough for the country to comply with the benchmark.

**Expenditures.** The declaration form should include information on expenditures incurred by the declarant. Such information is important to track changes in the declarant's wealth and compare it with income received from legitimate sources. The form should cover all expenditures regardless of their form or purpose.

**Trusts.** Trusts and similar legal arrangements are often used to hide assets and income. The requirement to disclose trusts in the declarations of public officials will help to track their assets and prevent the use of secret jurisdictions for hiding assets and income.

The declaration form should cover trusts or similar legal arrangements to which the declarant has any relation. Such a relation may be that of a settlor, trustee, protector, beneficiary of trust or another person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

**Virtual assets.** Virtual assets (e.g. cryptocurrencies) have been increasingly used as a vehicle both to provide undue advantages to public officials and accumulate unjustified wealth. The public officials may also claim that the source of income was the disposal of virtual assets that are hard to track. Disclosure of virtual assets in the declaration form will help to prevent such situations.

"Virtual assets" refer to digital representations of value that can be digitally traded or transferred and can be used for payment or investment purposes, including digital representations of value that function as a medium of exchange, a unit of account, and/or a store of value. Virtual assets are distinct from fiat currency (a.k.a. "real currency," "real money," or "national currency"), which is the money of a country that is designated as its legal tender. (FATF definition)

In some countries the asset and interest declarations cover intangible assets. Such countries would be compliant with the benchmark if the law,

		<p>bylaws, declaration form or an official guideline explicitly specify that intangible assets cover cryptocurrencies and other virtual assets.</p> <p>Each element (A-E) is scored separately.</p>
	<p>3.4. The legislation or official guidelines require the disclosure in the declarations of information on assets, income, liabilities, and expenditures of family members, that is, at least spouse and persons who live in the same household and have a dependency relation with the declarant.</p>	<p>See explanation of the “official guidelines” in the guide to benchmark 3.2.</p> <p>The declaration form should cover assets, income, liabilities, expenditures, and other declared items not only of the declarant but of his/her family members. Otherwise, the declaration system would be ineffective, because assets and interests may be acquired in the name of the family member to avoid disclosure and scrutiny. Systems where the declaration does not cover family members have a significant loophole undermining the whole disclosure system.</p> <p>The benchmark does not require (but also does not prohibit) that family members themselves should be obliged to file asset and interest declarations. Countries where public officials must include in their declaration forms information on family members will be compliant with the benchmark.</p> <p>The definition of the family members depends on the national context and law, but should cover, as a minimum, spouse of the declarant (person in formal marriage with the declarant including cases when de facto separated) and persons living in the same household with the declarant and having a dependency relation with the declarant. Therefore, children, parents, other relatives of the declarant should be covered by the definition of family members if they live in the same household as the declarant and have a dependency relation with the declarant (for example, provide or receive financial support from another). This definition should also cover a civil partner (co-habitant) of the declarant who lives in the same household with the declarant (regardless of whether the national law recognises such a partnership). The national law may set additional qualifying requirements for joint cohabitation (for example, a minimum number of days in joint cohabitation during a year). Systems where the definition of family members</p>

		<p>is broader than the minimum one explained here will be compliant with the benchmark as well.</p> <p>The declaration form may not require the disclosure of certain information about family members if the information is relevant only for tracking assets and interests of the declarant (for example, information on concurrent work, history of employment of the declarant). However, all main parts of the form (concerning assets, income, liabilities, expenditures, interests) should cover both the declarant and family members.</p>
	<p>3.5. Declarations are filed through an online platform.</p>	<p>Online submission and storage of declarations provides several benefits, including better security, simplified filing, fewer mistakes by declarants, better data management, no expenses to store and process paper copies, etc. It also opens opportunities for publishing data and its re-use, public scrutiny and higher accountability and transparency of the public administration.</p> <p>Filing through an online platform means that declarants must fill in an online electronic form and submit it through the same platform without the need to deal with paper copies of the form. Systems where the declarant must print out the form and submit its signed copy or where the declarant must download the form, fill it in and submit electronically are not compliant with the benchmark.</p>
	<p>3.6. Information from asset and interest declarations is open to the public:</p> <ul style="list-style-type: none"> <li>A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect privacy and personal security;</li> <li>B. Information from asset and interest declarations is published online;</li> </ul>	<p>The benchmark requires publication of data from asset declarations while establishing a balance between the right of the public to scrutinize declarations of public officials and the right to privacy and personal security. Neither the right of access to information, nor the right to privacy are absolute, therefore the benchmark advocates the maximum possible disclosure as long as it does not interfere disproportionately with the right to privacy and personal data protection.</p> <p><b>“Public by default”</b> means that information from declarations is not restricted in access in principle (there is an assumption of openness) and does not require any prior authorization for publication or providing it on request.</p>

- C. Information from asset and interest declarations is published online in a machine-readable (open data) format;
- D. Information from asset declarations in a machine-readable (open data) is regularly updated.

*Note: The benchmark does not concern special legal regulations (if exist) on the declarations filed by officials whose positions are classified or which contain other classified information.*

**“Access is restricted only to narrowly defined information to the extent necessary to protect privacy and personal security”** – the law or bylaws should explicitly determine what information is excluded from public access. Such exemptions should be narrowly defined – for instance, exclusion of all “confidential”, “personal”, “sensitive” etc. information or information “harmful to the person” will not be considered narrowly defined.

Any exemption should be justified by the need to protect privacy and personal security. Because such protection should be balanced and proportionate to what is necessary, exclusion of all or most of the personal data would not be considered compliant with the benchmark. Examples of acceptable exemptions: identification documents and date of birth of individuals, full residence address, telephone numbers and emails, bank account numbers, location where movable assets or cash outside of banks is held, names of counterparties to transactions.

The benchmark requires that information from declarations is published pro-actively (without prior request) online in practice and that only the information that is excluded according to element A is withheld. It does not preclude provision of information from declarations on request, although the monitoring will not assess this practice.

**“Published”** means that all submitted declarations are made public automatically and available for reading, downloading, printing online. The declarations may be published immediately after their submission or after a short “grace period”, that is a period when the declarant is allowed to correct data in the declaration.

The benchmark requires pro-active online publication of asset and interest declarations in the machine-readable format of re-usable data. Online publication and publication of open data promotes transparency and accountability and opens numerous opportunities for re-using the relevant data.

**Open data** is data that can be freely used, re-used and redistributed by anyone - subject only, at most, to the requirement to attribute and share alike.

		<p>See further details at <a href="https://opendatahandbook.org/guide/en/what-is-open-data">https://opendatahandbook.org/guide/en/what-is-open-data</a>.</p> <p><b>Machine-readable data</b> must be structured data and in data format that that can be automatically read and processed by a computer, such as CSV, JSON, XML, etc. PDFs are not considered machine-readable data. See further technical details at <a href="https://opendatahandbook.org/glossary/en/terms/machine-readable">https://opendatahandbook.org/glossary/en/terms/machine-readable</a>.</p> <p>The benchmark does not require publication of declarations that are covered by special legal regulations (if such exist) concerning declarations filed by officials whose positions are classified (for example, positions in the intelligence service or investigative authorities belonging to which is a state secret) or which contain other classified information (for example, information about declarant's spouse who works in a classified position). This exemption does not extend to officials whose appointment in the security or intelligence bodies is public information. The legislation should identify positions or cases when the declarations are filed under special requirements.</p> <p>Each element (A-D) is scored separately.</p>
	<p>3.7. Functionalities of the electronic declaration system include automated cross-checks with government databases, including the following sources:</p> <ul style="list-style-type: none"> <li>A. Register of legal entities;</li> <li>B. Register of civil acts;</li> <li>C. Register of land titles;</li> <li>D. Register of vehicles;</li> <li>E. Tax database on individual and company income.</li> </ul>	<p>The electronic platform of the asset and interest declarations provides many opportunities for efficiently using data generated by the submissions. One of such uses is the possibility to automatically cross check data from declarations with external sources, first of all other registers and databases held or administered by public authorities. By automating the data cross checks the responsible agency can free up resources of its staff to focus on in-depth verification of declarations and enforcement proceedings.</p> <p><b>“Automated cross checks”</b> means that software of the asset and interest declarations system checks data of the declarations against external data sources by comparing relevant data and showing detected discrepancies. This requires connection of the asset and interest declarations system with other IT systems (databases, registers, etc.), establishing protocol of data exchange, necessary communications channels, etc.</p>



		<p>The benchmark requires that the cross checks are carried out at least with the most important registers with data on ownership and assets, namely company register, register of civil acts (containing information on birth, marriage, etc.), register of legal titles to land, register of vehicles (as a minimum, register of cars) and database of the tax administration on income tax paid by natural and legal persons. The cross-checks may be conducted also with other registers, but the above-mentioned registers are the necessary minimum required to comply with the benchmark.</p> <p>For the compliance, the cross-checks must operate in practice.</p> <p>Each element (A-E) is scored separately.</p>
<p>4. There is unbiased and effective verification of declarations with enforcement of dissuasive sanctions</p>	<p>4.1. Verification of asset and interest declarations is assigned to a dedicated agency, unit, or staff and is implemented in practice:</p> <p>A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%); OR</p> <p>B. Verification of declarations is assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations, is responsible only for such verification and not for other functions (100%).</p>	<p>Verification of asset and interest declarations is important to ensure that relevant rules are enforced, and declarants comply with the requirement to submit full and accurate information about assets, income, interests, other declaration items. Verification must be effective to achieve its aims.</p> <p>“<b>Verification</b>” in all relevant benchmarks of Indicator 4 means an in-depth analysis and review of the declaration that goes beyond checking whether the declaration was filed on time and whether the form is complete and all required fields have been filled in.</p> <p>One of the conditions for having an effective verification is to assign this task to a dedicated agency, unit, or staff specialized in the verification of declarations and provide it with necessary resources.</p> <p>The term “<b>dedicated agency, unit or staff</b>” is explained in the general definitions (“An agency, a unit within the agency, or specialized staff that deals exclusively with certain function(s) and do not perform other duties”).</p> <p>Dedicated agency or unit can be an anti-corruption agency or another agency or a unit within the agency that has a clearly established mandate and responsibility to verify asset and interest declarations. The law may decentralise the verification and assign verification of declarations of different declarants to several agencies/units (e.g. the verification of judicial declarations may be assigned to a body or unit within the judiciary). If verification of declarations is assigned to an agency that has responsibilities</p>

		<p>beyond verification of asset and interest declarations (for example, tax administration, accounting chamber) the verification function within such agency should be assigned to a dedicated unit.</p> <p>The benchmark promotes two standards. The verification of declarations can be assigned to the specialized staff (without having a dedicated agency or unit) who deal only with the verification of declarations and do not perform other duties. Such systems will be scored 70% of the total score allocated to benchmark 4.1.</p> <p>Alternatively, verification of declarations can be assigned to a dedicated agency or a unit within an agency that has a clearly established mandate to verify declarations and is responsible only for such verification and not for other functions. Because this is the optimal solution, such systems will be scored 100% of the total score allocated to benchmark 4.1.</p> <p>In both alternative cases, the verification must be conducted in practice.</p>
	<p>4.2. Verification of asset and interest declarations, according to legislation and practice, aims to detect:</p> <ul style="list-style-type: none"> <li>A. Conflict of interest (ad hoc conflict of interest or other related situations, for example, illegal gifts, incompatibilities);</li> <li>B. False or incomplete information;</li> <li>C. Illicit enrichment or unjustified variations of wealth.</li> </ul>	<p>The verification of declarations should target the detection of conflict of interests and related situations (for example, illegal gifts, incompatibilities, other restrictions established in the national legislation), detection of false (missing information, information which does not conform with reality) or incomplete information, and illicit enrichment or unjustified variations of wealth.</p> <p>The legislation should explicitly state these objectives of the verification. They should also be applied in practice.</p> <p>Each element (A-C) is scored separately.</p>
	<p>4.3. A dedicated agency, unit, or staff dealing with the verification of declarations has the following powers clearly stipulated in the legislation and routinely used in practice:</p> <ul style="list-style-type: none"> <li>A. Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities;</li> </ul>	<p>The benchmark defines the list of powers which the verification agency, unit, or staff should have for the effective execution of their mandate. Each power should be clearly and explicitly stated in the legislation and routinely applied in practice, that is applied at least 3 times during the previous year. The country will need to provide 3 examples of application for each power mentioned in elements A-F.</p>

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

**“Request and obtain information, including confidential and restricted information, from private individuals and entities, public authorities”.**

The dedicated agency, unit or staff should be able not only to request but also to obtain information from any individual or entity, including private ones. If the power to request is not supported by the obligation to provide information, the element is not met. Access should include confidential and other restricted information; access to classified information may require necessary security clearance to the respective personnel.

**“Have access to registers and databases which are held/administered by domestic public authorities and are necessary for the verification”.**

If there is at least one government database or registry which is necessary for the verification of declarations but is not accessible to the dedicated agency, unit, or staff, the element is not met. The benchmark does not indicate any special type of access needed for compliance.

**“Access information held by the banking and other financial institutions”.**

This element has two alternatives which are scored differently. If the dedicated agency, unit, or staff need a prior judicial approval to get access to bank or other financial institution data, such a system will be scored 50% of the total number of points allocated to this element of the benchmark. If such an approval is not required, the country will receive 100% of the total number of points allocated to this element of the benchmark.

**“Have access to available foreign sources of information, including after paying a fee if needed”.**

This element promotes access to databases, registries, other data sources located abroad, either through electronic or written requests. The legislation should explicitly allow a possibility of such access and using data obtained this way during the verification. The verification dedicated agency, unit, or staff should be able to access such data after paying a fee if it is required; in other words, payment of a fee (for example, to obtain a statement from the company register) should not be an obstacle in legal or practical terms.

**“Commissioning or conducting an evaluation of an asset's value”.**

The verification dedicated agency, unit, or staff should be authorized to conduct

		<p>a valuation of assets mentioned in the declaration or to reach other objectives of the verification (for example, to calculate the unjustified wealth) on its own or by commissioning an external evaluation (for example, to a certified evaluator). It is sufficient to have one of these possibilities of the evaluation.</p> <p><b>“Providing ad hoc or general clarifications to declarants on asset and interest declarations.”</b> Ad hoc clarifications are provided upon requests of declarants or public authorities in relation to a specific situation. General clarifications do not concern specific cases and may be issued to summarize enforcement practice or to answer multiple similar inquiries.</p> <p>Each element (A-F) is scored separately.</p>
	<p>4.4. The following declarations are routinely verified in practice:</p> <ul style="list-style-type: none"> <li>A. Declarations of persons holding high-risk positions or functions;</li> <li>B. Based on external complaints and notifications (including citizens and media reports);</li> <li>C. <i>Ex officio</i> based on irregularities detected through various, including open, sources;</li> <li>D. Based on risk analysis of declarations, including based on cross-checks with the previous declarations.</li> </ul>	<p>The verification agency, unit, or staff should be required to verify regularly certain types of declarations or when they receive or detect on their own a credible allegation of irregularity.</p> <p>The benchmark sets minimum requirements for grounds that should trigger the verification. The benchmark does not prohibit using in addition other grounds for starting the verification.</p> <p><b>“Routinely”</b> is explained in the general definitions and means that for each element there were at least 3 cases of verifications started in practice based on the respective ground.</p> <p><b>“Persons holding high-risk positions or functions”</b> – the national legislation should determine what positions/functions should be covered. There is no requirement that declarations of all high-level officials are verified each time they submit declarations. The legislation may narrow down the scope of the verification, but it should clearly determine declarations of what officials must be verified.</p> <p>If the list of such positions or functions is not determined directly by the legislation, but by the verification or other agency, then such a decision should be based on risk analysis and should be justified and not arbitrary.</p> <p><b>“External complaints and notifications (including citizens and media reports)”</b> means complaints or other signals received by the verification</p>

agency, unit, or staff from the public (individuals, NGOs, media, etc.), as well as notifications received from public authorities.

**“Ex officio based on irregularities detected through various, including open, sources.”** The verification agency, unit, or staff should start the verification when it detects on its own (i.e. not based on a signal received from an individual or entity) a possible irregularity. To this end, the agency, unit, or staff should monitor and analyse open sources (professional media outlets, social media, other sources) and react to relevant information.

As with the high-level officials, starting a verification based on external signals or allegations uncovered on its own, does not mean that all such signals or allegations should automatically lead to the verification. The verification agency, unit, or staff may have a procedure to filter such information and prioritize verification to match the capacity and resources it has.

**“Based on risk analysis of declarations, including based on cross-checks with the previous declarations.”** The risk-based analysis should be applied to submitted declarations to determine the inherent possibility of violations in the declarations and decide which declarations should be verified. The risk analysis is conducted based on a set of indicators (‘red flags’). The exact framework and methods to conduct the risk analysis should be determined by the national legislation. It should include as a mandatory element comparison with the previous declarations of the same declarant.

Each element (A-D) is scored separately.

4.5. The following measures are routinely applied:

- A. Cases of possible conflict of interest violations (such as violations of rules on ad hoc conflict of interest, incompatibilities, gifts, divestment of corporate ownership rights, post-employment restrictions) detected

The benchmark looks into practice of detection of possible violations based on the verification of asset and interest declarations. There is no requirement that the alleged violations be of certain legal type (for example, criminal, administrative, or disciplinary).

There should be a clear link between the verification of declarations and detection of the respective possible violations.

based on the verification of declarations and referred for follow-up to the respective authority or unit;

- B. Cases of possible illicit enrichment or unjustified assets detected based on the verification of declarations and referred for follow-up to the respective authority or unit;
- C. Cases of violations detected following verification of declarations based on media or citizen reports and referred for follow-up to the respective authority or unit.

**“Routinely”** is explained in the general definitions and means that for each element of the benchmark there were at least 3 respective cases.

Element A covers all offences related to potential, real or apparent conflict of interest as applied in the national law (for example, a decision taken in the situation of conflict of interest, a failure to disclose the conflict of interest to superiors) and offences which are not linked to ad hoc conflict of interest situations but concern violation of the related anti-corruption restrictions (incompatibilities, gifts, transfer of ownership rights in businesses, post-employment restrictions, etc.). It would be sufficient to show the detection and referral of at least 3 cases of any of such violations or their any combination.

**“Referred for follow-up to the respective authority or unit”** means that the verification agency, unit, or staff as a result or during verification of an asset declaration detect a possible case of conflict of interest violation, illicit enrichment, etc. and refer it to the authority or unit which has mandate to investigate and/or apply sanctions or measures. Such an authority or unit could be a law enforcement body, anti-corruption agency, agency where the official works, or another authorised authority or unit within an authority. It also covers situations when one unit in an agency (for example, an anti-corruption agency) detects the case and sends it for follow-up to another unit in the same agency.

The benchmark does not look into actual sanctions imposed as the outcome of such cases.

**“Media or citizen reports”** include situations when the verification was started after receiving a report addressed to the verification agency, unit, or staff or when the agency, unit, or staff started the verification using information they uncovered on their own from the media or other open sources. Citizen reports include reports by the civil society organizations and any individuals or entities other than public authorities or their officials.

Each element (A-C) is scored separately.

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

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

“**Routinely**” is explained in the general definitions and means that for each element of the benchmark there were at least 3 relevant sanctions imposed.

“**Sanctions imposed**” means the decision to apply sanction made by the final decision-making body. For example, if an administrative body (for example, an anti-corruption agency) must detect the offence, collect and record evidence and then present the case to court for imposing a sanction, the benchmark takes into account the court decision, not of the administrative agency. The first instance court decision is sufficient in this situation. Another example: if the anti-corruption agency or another administrative body directly imposes a sanction for violation (which can then be appealed in court), such a sanction will be considered sufficient for this benchmark. For criminal sanctions, the benchmark takes into account the first instance court sentences, not the suspicion or charges brought by the investigative authority or prosecutor.

Administrative sanctions can vary depending on the country’s legislation and may include a fine, public works, dismissal from office, and ban on holding a public office. The benchmark does not require any specific form of sanction.

Element B requires imposition of criminal sanctions for intentionally false or incomplete information in declarations when the discrepancy or missing/incomplete information is quantified and is of significant amount. The national legislation should define what is a significant amount.

For element C, it is sufficient to show at least 3 cases of administrative or criminal sanctions or a combination of them if they were imposed on high-level officials for false or incomplete information in declarations.

Each element (A-C) is scored separately.

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## PERFORMANCE AREA 3: PROTECTION OF WHISTLEBLOWERS

### Introduction

Ensuring effective protection of whistle-blowers is crucial given their potential role in combatting corruption by providing information on practices that would otherwise go undetected, thereby contributing to the prevention, detection of corruption. The information brought forward by whistleblowers can also play an important part in the investigation and prosecution of corruption. Persons need specific legal protection where they acquire the information they report through their work-related activities and therefore run the risk of retaliation in their workplace. The underlying reason for providing such persons with protection is their position of economic vulnerability vis-à-vis the person on whom de facto they depend for work. Where there is no such work-related power imbalance, for instance in the case of ordinary complaints or citizen appeals, there is no need for protection against retaliation. As was noted in the recent 2019 resolution of the Parliamentary Assembly of the Council of Europe, without whistle-blowers, it will be impossible to resolve many of the challenges to our democracies, including the fight against grand corruption and money-laundering. The 2019 resolution further highlights the urgent need to implement targeted measures which encourage people to report the relevant facts and afford better protection to those who take the risk of doing so.

The OECD Working Group on Bribery's [2021 Anti-Bribery Recommendation](#) provides that member countries establish, in accordance with their jurisdictional and other basic legal principles, strong and effective legal and institutional frameworks to protect and/or to provide remedy against any retaliatory action to persons working in the private or public sector who report on reasonable grounds suspected acts of bribery of foreign public officials in international business transactions and related offences in a work-related context.

The UN Convention against Corruption (Art. 33) states that each State Party, shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention. In addition, the Council of Europe's Civil Law Convention on Corruption (Art. 9) states each Party, shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

The Directive of the European Parliament and Council on the protection of persons who report breaches of Union law is the most modern, comprehensive, and soon to be widely used, legal standard that sets down common minimum standards for whistleblower protection. The Parliamentary Assembly of the Council of Europe invited the Committee of Ministers, under [Recommendation 2162\(2019\)1](#), to begin preparations for negotiating a binding legal instrument to improve whistleblower protection in the form of a Council of Europe convention drawing from the above mentioned European Parliament

and Council Directive.		
INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. The whistleblower's protection is guaranteed in law	<p>1.1. The law guarantees the protection of whistleblowers:</p> <p>A. Individuals who report corruption related wrongdoing at their workplace that they believed true at the time of reporting;</p> <p>B. Motive of a whistleblower or that they make a report in good faith are not preconditions to receiving protection;</p> <p>C. If a public interest test is required to qualify for protection, corruption-related wrongdoing are considered to be in public interest, and their reporting qualifies for protection by default.</p> <p><i>Note: Corruption related wrongdoing means that the material scope of the law should extend to: 1) corruption offences (see definition in the introductory part of this guide); and 2) violation of the rules on conflict of interest, asset and interest declarations, incompatibility, gifts, other anti-corruption restrictions. At their workplace means that a report is made based on information acquired through a person's current or past work activities in the public or private sector. As such, citizen appeals are not covered;</i></p>	<p>The benchmark requires that the primary law includes a certain standard of whistleblower protection.</p> <p>The threshold for whistleblower protection under the law should be "reasonable belief of wrongdoing". The test should be whether someone with equivalent knowledge, education and experience (a peer) could agree with such a belief. This means, in particular, that a whistleblower qualifies for protection even if the investigation did not prove the offence. Consequently, knowingly false reports are not considered as whistleblower reports under this benchmark.</p> <p><b>"Good faith"</b>: the motives for making the report should be irrelevant for protections under the law to apply. Therefore, laws that require that reports are made in good faith or other similar conditions (e.g. requirement to report disinterestedly or to examine the whistleblower's state of mind) will not be compliant with element B. However, if the law includes a good faith requirement the country will be compliant if either the law or case law provides that the motives of the whistleblower are immaterial in deciding whether a reporting person should receive protection.</p> <p><b>"Public interest"</b>: a country that does not require compliance with the "public interest test" for the whistleblower to be protected will be compliant with the element C. If national legislation includes a public interest test, the country will be compliant if reporting corruption related wrongdoing is always considered to be in the public interest. The latter can be based on the case-law or official guidelines.</p> <p>Each element (A-C) is scored separately.</p>

	<p>1.2. Whistleblower legislation extends to the following persons who report corruption-related wrongdoing at their workplace:</p> <ul style="list-style-type: none"> <li>A. Public sector employees;</li> <li>B. Private sector employees;</li> <li>C. Board members and employees of state owned enterprises.</li> </ul> <p><i>Note: Whistleblower legislation means all legal provisions defining whistleblowing, reporting procedures and protections provided to whistleblowers.</i></p>	<p>The benchmark defines the minimum personal scope for whistleblowers that should be included in law.</p> <p>“Employees”: means persons qualified as employees under national legislation.</p> <p>If board members and employees of SOEs are explicitly included as reporting persons in law or a country can demonstrate through case law or official guidelines that they are also covered by whistleblower legislation, this element is met.</p> <p>Each element (A-C) is scored separately.</p>
	<p>1.3. Persons employed in the defence and security sectors who report corruption-related wrongdoing benefit from equivalent protections as other whistleblowers.</p>	<p>This benchmark is aimed at ensuring legislation on whistleblower protection extends to public sector employees in the defence and security sectors. It can be the general legislation applicable to all whistleblowers or special provisions applicable to employees of these sectors.</p> <p>If a country does not exclude defence and security sector employees from the whistleblower protection and the case-law or official guidelines confirm it, it will be compliant with the benchmark. The country will also be compliant if the legislation explicitly extends whistleblower protection to this category of employees.</p> <p>The protections provided to this category of employee should not be lower than the protections provided to other whistleblowers under domestic legislation.</p>
	<p>1.4. In administrative or judicial proceedings involving the protection of rights of whistleblowers, the law regulating respective procedure puts on the employer the burden of proof that any measures taken against a whistleblower were not connected to the report.</p>	<p>If the primary law explicitly establishes this shift of the burden of proof, the benchmark is met.</p> <p>If a whistleblower makes a complaint and can make a prima facie case that their employer took measures against them</p>

		<p>because of the whistleblower report, then the burden of proof would shift onto the employer. In this case, the employer would have to demonstrate that the measures taken against the whistleblower were not linked to or motivated by the report.</p>
	<p>1.5. The law provides for the following key whistleblower protection measures:</p> <ul style="list-style-type: none"> <li>A. Protection of whistleblower’s identity;</li> <li>B. Protection of personal safety;</li> <li>C. Release from liability linked with the report;</li> <li>D. Protection from all forms of retaliation at the workplace (direct or indirect, through action or omission).</li> </ul>	<p>This benchmark represents the minimum standard of protection that the primary law should explicitly provide.</p> <p><b>“Protection of whistleblower’s identity”</b> means that the law should ensure that the identity of the whistleblower cannot be disclosed without their express consent.</p> <p><b>“Protection of personal safety”</b> means that the law provides for personal protection measures in cases where a reporting person’s life or safety are in danger. Provision of such protection should not be linked to a criminal or another proceedings.</p> <p>Witness protection regimes or provisions on protection of collaborators of justice will be sufficient to meet the requirements of the benchmark only if such protection measures explicitly extend to whistleblowers who do not have a status of witness or another status in criminal or other proceedings.</p> <p><b>“Release from liability linked with the report”</b> means that the law should ensure that a whistleblower is not subject to criminal, civil, administrative or labour related liability for making a report unless they committed a criminal offense in order to obtain the reported information.</p> <p><b>“Protection from all forms of retaliation at the workplace”</b> means the law should prohibit the employer or persons working for or acting on behalf of the employer from any threats</p>

		<p>or acts which disadvantage a whistleblower in the workplace because he/her made a report.</p> <p>Each element (A-D) is scored separately.</p>
	<p>1.6. The law provides for the following additional whistleblower protection measures:</p> <ul style="list-style-type: none"> <li>A. Consultation on protection;</li> <li>B. State legal aid;</li> <li>C. Compensation;</li> <li>D. Reinstatement.</li> </ul>	<p>This benchmark represents additional protections that the primary law should explicitly provide.</p> <p><b>“Consultation on protection”</b> means that the law provides mechanism(s) where a potential whistleblower can get individual advice confidentially and free of charge on the scope, protections, remedies, procedures and channels provided to whistleblowers under law.</p> <p><b>“State legal aid”</b> means that the law provides that whistleblowers who lack sufficient resources or would otherwise qualify for state legal aid under national legislation may request and benefit from public financial assistance in all legal proceedings for those that request it.</p> <p><b>“Compensation”</b> means that the law should provide for a whistleblower who is subject to any form of retaliation in the workplace to have the right and access to financial compensation for the damage suffered.</p> <p><b>“Reinstatement”</b> means that the law provides this legal remedy in a court of law when a whistleblower is subject to dismissal, transfer, demotion, or for restoration of a cancelled permit, license or contract due to having made a report on corruption related wrongdoing.</p> <p>Each element (A-D) is scored separately.</p>
2. Effective mechanisms are in	2.1. The following reporting channels are provided in law and available in practice:	This benchmark looks at the channels that are available for whistleblowers for reporting. For each element A-C, a country

place to ensure that whistleblower protection is applied in practice

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

must clearly and explicitly provide the respective channel in its law.

The channel must be available in practice meaning that it can be used by whistleblowers to make reports and that there are no obstacles which preclude whistleblowers from using them. Under this benchmark, the monitoring will not require proof that each channel has actually been used in practice, only that it was available.

**“Internal channels”** means that the law provides that at least public sector bodies and SOEs have an obligation to establish procedures for their employees to make reports on corruption-related wrongdoing to an impartial person or unit responsible for receiving and processing such reports within the public sector body or SOE. The availability of both oral and written forms of reporting is encouraged but the existence of one is sufficient for the country’s compliance.

**“External channels”** means that the law designates at least one public sector body to receive reports of corruption-related wrongdoing that persons covered under whistleblower legislation may report to outside of their place of work.

**“Public disclosure”** means that a whistleblower may report to the media or may make the report themselves on social media or via other platforms, when any of the following preconditions is met: where report through another channel was not followed up; or where corruption related wrongdoing presents an imminent or manifest danger to the public; or where there is a risk of retaliation or low chance of the breach being addressed by reporting through external channels.

Each element (A-D) is scored separately.



	<p>2.2. There is a central electronic platform for filing whistleblower reports which is used in practice.</p>	<p>The benchmark aims at promoting the use of a digital platform for reporting and collecting data on reports of corruption related wrongdoing.</p> <p>Simply providing an online hotline or a web-form for making a report to an internal or external authority will not be sufficient to meet the benchmarks requirements.</p> <p>To meet the benchmark, the central electronic platform <b>may</b>, for example, provide the following functionalities: the collection, storage, use, protection, accounting, search, analysis of whistleblower reports, online data exchange with the whistleblower, anonymous reporting, the status of the report or feedback provided to the whistleblower, collection of whistleblower reports received by authorities acting as internal or external channels.</p> <p>The above elements are examples to assist the monitoring team in distinguishing between hotlines and a central electronic platform for the purposes of the benchmark.</p> <p>The central electronic platform needs to be operational, but the benchmark will not examine the efficiency of the platform itself.</p>
	<p>2.3. Anonymous whistleblower reports:</p> <ul style="list-style-type: none"> <li>A. Can be examined;</li> <li>B. Whistleblowers who report anonymously may be granted protection when they are identified.</li> </ul>	<p>External authorities can accept and examine verifiable reports made anonymously concerning corruption related wrongdoing. This can either be provided in legislation or official guidelines or shown through practice of examining anonymous reports.</p> <p>Legislation or practice provide that, where a person who made an anonymous report is identified, protection available to whistleblowers should apply to such a person.</p> <p>Each element (A-B) is scored separately.</p>

<p>3. The dedicated agency for whistleblower protection has clear powers defined in law and is operational in practice</p>	<p>3.1. There is a dedicated agency, unit or staff responsible for the whistleblower protection framework.</p>	<p>The benchmark requires that legislation stipulates the existence of a dedicated agency, unit or staff for implementing whistleblower protection framework. Whether it operates in practice is checked in benchmark.</p> <p>The term “dedicated agency, unit or staff” is explained in the general definitions (“An agency, a unit within the agency, or specialized staff that deals exclusively with certain function(s) and do not perform other duties”).</p>
	<p>3.2. A dedicated agency, unit or staff has the following key powers clearly stipulated in the legislation:</p> <ul style="list-style-type: none"> <li>A. Receive and investigate complaints about retaliation against whistleblowers;</li> <li>B. Receive and act on complaints about inadequate follow up to reports received through internal or external channels or violations of other requirements of whistleblower protection legislation;</li> <li>C. Monitor and evaluate the effectiveness of national whistleblower protection mechanisms through the collection of statistics on the use of reporting channels and the form of protection provided.</li> </ul>	<p>The benchmark requires that each of the listed key powers of the dedicated agency, unit, or staff are clearly and explicitly stated in the legislation.</p> <p>“Receive and investigate complaints about retaliation against whistleblowers” means that the dedicated agency, unit, or staff, can receive complaints of retaliation and take measures to verify their accuracy.</p> <p>Element B is focused on monitoring compliance of authorities responsible for providing internal and external channels with whistleblower legislation. Dedicated agency, unit, or staff should have the power to receive and act on complaints about inadequate follow up on reports, or other violations of whistleblower protection legislation. To act on complaints means that the dedicated agency, unit, or staff can at least issue recommendations or orders to the respective authorities to put an end to violations of whistleblower protection legislation.</p> <p>In order to monitor the effectiveness of protection measures granted to whistleblowers, the dedicated authority should be able to collect data on at least the number of reports received through external channels and protections provided to whistleblowers.</p>

	<p>3.3. The dedicated agency, unit or staff has the following powers clearly stipulated in the legislation:</p> <ul style="list-style-type: none"> <li>A. Order or initiate protective or remedial measures;</li> <li>B. Impose or initiate imposition of sanctions or application of other legal remedies against retaliation.</li> </ul>	<p>Each element (A-C) is scored separately.</p> <p>The benchmark requires additional powers which the dedicated agency, unit, or staff should have for the effective execution of their mandate. Each power should be clearly and explicitly stated in the legislation.</p> <p><b>“Order or initiate protective or remedial measures”</b> means that the dedicated agency, unit or staff impose or request another responsible authority to provide a specific protection or remedial measure to a whistleblower (initiate a request for protection of personal safety, request legal aid etc.).</p> <p><b>“Impose or Initiate imposition of sanctions or application of other legal remedies against retaliation”</b> means that in cases of retaliation against whistleblowers the dedicated agency, unit or staff itself may impose a sanction or initiate judicial proceedings or request the imposition of a sanction by another competent authority.</p> <p>Each element (A-B) is scored separately.</p>
	<p>3.4. The dedicated agency, unit or staff responsible for the whistleblower protection framework functions in practice.</p>	<p>This benchmark looks at whether the dedicated agency, unit or staff can use its powers defined under national legislation and that it actually does so in practice. Only powers provided under the national legislation will be examined, not the full list of powers listed under benchmarks 3.2-3.3.</p> <p>“Functions in practice” means there is evidence demonstrating that the dedicated agency, unit or staff is operational by examining whether each power provided to the dedicated agency, unit or staff in the legislation was used at least once during the evaluation period. Such evidence can be presented, for example, as reports published by the dedicated agency, unit or staff, etc.</p>

<p>4. The whistleblower protection system is operational, and protection is routinely provided</p>	<p>4.1. Complaints of retaliation against whistleblowers are routinely investigated.</p>	<p>The benchmark looks into practice of investigating complaints of retaliation against whistleblowers. There is no requirement that alleged retaliation results in sanctions, the focus is on actively investigating incoming complaints of retaliation by whistleblowers.</p> <p>“Routinely” is explained in the general definitions and means that for each element of the benchmark there were at least 3 respective cases during the previous year. The country will need to provide at least 3 examples of such investigations with the sufficient legal and factual details to confirm that they concern whistleblower protection and investigation of retaliation complaints.</p>
	<p>4.2. Administrative or judicial complaints are routinely filed on behalf of whistleblowers.</p>	<p>The benchmark looks into practice of the dedicated agency, unit or staff of filing complaints by initiating administrative or judicial proceedings based on complaints of retaliation or other complaints of violations of whistleblower legislation (e.g. non-compliant channels within public institutions, breach of confidentiality) on behalf of whistleblowers.</p> <p>“Routinely” is explained in the general definitions and means that for each element of the benchmark there were at least 3 respective cases during the previous year. The country will need to provide at least 3 examples of complaints filed by the dedicated agency, unit or staff on behalf of whistleblowers. To serve as an example this could take the form of an order to another institution to set up a reporting channel, an order for reinstatement or a petition to a court on behalf of a whistleblower who has suffered retaliation, etc.</p>

	<p>4.3. The following protections are routinely provided to whistleblowers:</p> <ul style="list-style-type: none"> <li>A. State legal aid;</li> <li>B. Protection of personal safety;</li> <li>C. Consultations;</li> <li>D. Reinstatement;</li> <li>E. Compensation.</li> </ul>	<p>The benchmark looks into the practice of the listed protection measures granted to whistleblowers.</p> <p>“Routinely” is explained in the general definitions and means that for each element of the benchmark there were at least 3 respective cases in the previous year. The country will need to provide at least 3 examples of protection measures under each element with the sufficient legal and factual details to confirm that they concern whistleblower protection and protection stated in the element.</p> <p>Each element (A-E) is scored separately.</p>
	<p>4.4. There are no cases where breaches of confidentiality of a whistleblower’s identity were not investigated and sanctioned.</p>	<p>The benchmark is aimed at assessing the enforcement of whistleblower protection measures.</p> <p>If the monitoring team cannot find any cases where a breach of confidentiality occurred during the evaluation period that were not investigated and, where appropriate, sanctioned then this benchmark will be considered met. On-going investigations for breaches of confidentiality at the time of on-site visit will not be covered.</p> <p>If there was at least one case of breach of confidentiality of whistleblower identity which was known or brought to their attention in any other way to the authorities and the authorities did not follow up on it, then the benchmark will not be met.</p>

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## PERFORMANCE AREA 4: BUSINESS INTEGRITY

### Introduction

For the purposes of the IAP monitoring, business integrity is defined broadly as the environment that stimulates companies to conduct their operations without corruption. Actions that need to be taken to promote business integrity go further than compliance programmes by companies, and include measures governments need to take to create framework conditions conducive to compliance, as well as efforts by other stakeholders such as international organisations and initiatives, business associations and civil society actors to promote anti-corruption and integrity demand in the society at large. The IAP monitoring methodology focuses on four key areas of business integrity: (1) oversight of risk management by company boards, (2) disclosure of information on the beneficial owners of companies, (3) operation of business ombudsmen or other similar institutions and (4) integrity measures in state-owned enterprises.

Business integrity is a relatively new area in the ACN region. There is a relatively limited scope of international instruments establishing standards in this area, but the good practice is developing rapidly.

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. Boards of listed/publicly traded companies are responsible for oversight of risk management, including corruption risks	1.1. Corporate Governance Code (CGC) establishes the responsibility of boards of the companies listed in stock exchanges to oversee risk management: <ul style="list-style-type: none"> <li>A. CGC or other related documents establish the responsibility of boards to oversee risk management;</li> <li>B. CGC or other related documents establish the responsibility of boards to oversee corruption risk management;</li> <li>C. CGC or other related documents which establish responsibility to oversee risk management are mandatory for listed companies.</li> </ul>	Corporate Governance Codes or similar regulations should require that boards are responsible for protecting companies from corruption risks as a part of integrated risk-management by adopting policies and procedures to mitigate these corruption risks, and to regularly review their implementation.  The benchmark concerns only Corporate Governance Code applicable to companies whose shares are listed on a stock exchange.  Where companies may have more than one board (such as

		<p>two-tier system with a supervisory board and an executive board), countries will be considered compliant if at least one of the boards has the relevant responsibilities.</p> <p>Countries will be awarded points if relevant legislation establishes the responsibility of boards to oversee risk management (A). They will be awarded additional points if it further establishes the responsibility to oversee specifically the management of corruption risks (B) and if the relevant provisions are mandatory for listed companies (C). Countries will be compliant with element C even if the mandatory provisions in question only cover general risk management, without specific reference to corruption risks.</p> <p>Each element (A-C) is scored separately.</p>
	<p>1.2. Securities regulator or other relevant authorities monitor how listed companies comply with the CGC:</p> <ul style="list-style-type: none"> <li>A. The legislation identifies an authority responsible for monitoring the compliance of listed companies with the CGC;</li> <li>B. The monitoring is conducted in practice.</li> </ul>	<p>National regulators such as Stock Exchange and Securities Commission, Central Bank or other relevant authorities should ensure in practice oversight over the implementation of the CGC.</p> <p>The regulator should have the monitoring function clearly included in its mandate.</p> <p>Monitoring means collecting information and conducting regular reviews of compliance with the respective Corporate Governance Code requirements. To prove compliance with the benchmark in practice, the country will have to provide relevant evidence, for example, protocols of meetings, decisions or other written or public traces demonstrating that the respective authority regularly monitors compliance with the CGC.</p> <p>Each element (A-B) is scored separately.</p>



<p>2. Disclosure and publication of beneficial ownership information of all companies registered in the country, as well as verification of this information and sanctioning of violations of the relevant rules, is ensured</p>	<p>2.1. There is the mandatory disclosure of information about beneficial owners of registered companies:</p> <ul style="list-style-type: none"> <li>A. The country's legislation must include the definition of beneficial owner (ownership) of a legal entity which complies with the relevant international standard.</li> <li>B. The law requires companies to provide a state authority with up-to-date information about their beneficial owners, including at least the name of the beneficial owner, the month and year of birth of the beneficial owner, the country of residence and the nationality of the beneficial owner, the nature and extent of the beneficial interest held;</li> <li>C. Beneficial ownership information is collected in practice.</li> </ul>	<p>The benchmark requires that the country ensure in the law and in practice that legal entities register with the state information about their beneficial owners.</p> <p>The monitoring team will assess the definition in national legislation with the FATF definition of beneficial owner.</p> <p>A country may collect and disclose more information on the beneficial ownership, but the list in the benchmark is the minimum for compliance.</p> <p>Countries will be asked to provide evidence that the beneficial ownership information is collected in practice, such as statistics concerning the number of companies which have provided this information.</p> <p>Each element (A-C) is scored separately.</p>
	<p>2.2. Public disclosure of beneficial ownership information is ensured in machine-readable (open data), searchable format and free of charge:</p> <ul style="list-style-type: none"> <li>A. Beneficial ownership information is made available to the general public through a centralized online register;</li> <li>B. Beneficial ownership information is published in a machine-readable (open data) and searchable format;</li> <li>C. Beneficial ownership information is available to the general public free of charge.</li> </ul>	<p>The benchmark complements benchmark 2.1. and sets requirements as to the way how the beneficial ownership information should be disclosed online. Public disclosure means both proactive online publication and provision of information (datasets) on request. The benchmark looks into practice of enforcement, not legislation. The benchmark does not limit disclosure of information by the need to show legitimate interest for the person to access relevant information.</p> <p>To be compliant, the country has to show that the central register for disclosing information on beneficial ownership is operational.</p> <p>Machine-readable data must be structured data and in data format that that can be automatically read and processed by a computer, such as CSV, JSON, XML, etc. PDFs are</p>

		<p>not considered machine-readable data (see further technical details at <a href="https://opendatahandbook.org/glossary/en/terms/machine-readable">https://opendatahandbook.org/glossary/en/terms/machine-readable</a>). Open data means that relevant information should be made available to the public without any restriction that impedes the re-use of information. “Searchable” means that beneficial ownership information should be published online in a way that allows indexing by the search engines and the respective web-site must have search functionality.</p> <p>“Free of charge” means that anyone can access beneficial ownership information published online without having to pay a fee to obtain certain data, to register on the web-site, etc. Certain information can be hidden behind paywall, but the minimum information on beneficial owners listed in benchmark 2.1 should be available free of charge.</p> <p>Each element (A-C) is scored separately.</p>
	<p>2.3. Beneficial ownership information is verified routinely by public authorities.</p>	<p>The benchmark requires that public authorities conduct verification of the beneficial ownership information that is recorded in the central register. Such verification may be conducted during registration of the beneficial ownership information or afterwards. The benchmark does not require that information of all legal entities is verified: random or risk based verification will suffice.</p> <p>Verification here means an in-depth analysis of the disclosure, including checking the accuracy and completeness of data provided.</p> <p>The authorities will need to provide at least 3 examples of verification conducted during the previous year including information about the grounds for the verification, what it</p>

	<p>2.4. Sanctions are applied routinely at least for the following violations of regulations on registration and disclosure of beneficial ownership:</p> <ul style="list-style-type: none"> <li>A. Failure to submit for registration or update information on beneficial owners;</li> <li>B. Submission of false information about beneficial owners.</li> </ul>	<p>included and its outcomes.</p> <p>The benchmark requires that sanctions have been applied routinely in practice in the previous calendar year. “Routinely” is explained in the general definitions. The authorities will need to provide at least 3 examples of sanctions imposed for each element – A) for failure to submit for registration or update information on beneficial owners, and B) submission of false information about beneficial owners.</p> <p>The sanctions should be imposed by the first instance court or another final decision-making body.</p> <p>Each element (A-B) is scored separately.</p>
<p>3. There is a mechanism to address concerns of companies related to violation of their rights</p>	<p>3.1. There is a dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities, which:</p> <ul style="list-style-type: none"> <li>A. Has the legal mandate to receive complaints from companies about violation of their rights by public authorities and to provide protection or help businesses to resolve their legitimate concerns;</li> <li>B. Has sufficient resources and powers to fulfil this mandate in practice;</li> <li>C. Analyses systemic problems and prepares policy recommendations to the government on improving the business climate and preventing corruption.</li> </ul>	<p>The benchmark requires that the government appointed or established in practice an entity that has a special mandate for receiving and following up on alleged violation of company rights by actions or omissions on the part of the state or municipal authorities (such as tax, inspections, permits and licencing and other matters), for example, Business Ombudsman, High Level Reporting Mechanisms or other similar entities.</p> <p>For the purpose of this benchmark, reporting (complaint) channels in law-enforcement and anti-corruption bodies or administrative courts are not counted as designated institutions for receiving company complaints.</p> <p>Legislation should provide this institution with powers to conduct administrative investigations and to provide protection or other legal help, such as requiring a state body cancelling decisions that infringed on company’s interests, other actions restoring company’s legitimate interests. A decision of the institution does not have to be</p>

		<p>mandatory for execution, but the state or local public authority to which it is addressed should at least review it and provide a justified reply to the institution. The institution should be able to use these powers in practice.</p> <p>The institution should have in practice sufficient human and financial resources to implement its mandate. The monitoring team will evaluate whether the institution has sufficient human, financial and other necessary resources based on the country context (number of complaints, procedures used, etc.).</p> <p>The benchmark requires that the institution conduct in practice a regular analysis of problems that local and international companies complain about in relation to business environment, identify systemic solutions and prepare recommendations for the government in general or to sectoral ministries. There should be an official channel for these bodies to submit their recommendations to the government.</p> <p>Each element (A-C) is scored separately.</p>
	<p>3.2. The institution mentioned in Benchmark 3.1 publishes online at least annually reports on its activities, which include the following information:</p> <ul style="list-style-type: none"> <li>A. Number of complaints received and the number of cases resolved in favour of the complainant;</li> <li>B. A number of policy recommendations issued, and the results of their consideration by the relevant authorities.</li> </ul>	<p>Publication of the results of the consideration of the recommendations by the relevant authorities means publishing a breakdown of the total number of recommendations by the type of outcome (e.g. “accepted,” “not accepted”, etc).</p> <p>Each element (A-B) is scored separately.</p>
<p>4. State ensures the integrity of governance structure and operations of state</p>	<p>4.1. Supervisory boards in the five largest SOEs:</p> <ul style="list-style-type: none"> <li>A. Are established through a transparent procedure based on merit, which involves online publication of vacancies and is open to all eligible candidates;</li> <li>B. Include a minimum of one-third of independent members.</li> </ul>	<p>For all benchmarks of this indicator, five largest SOEs means the five most economically significant SOEs in terms of value, revenues or number of employees. In response to the monitoring questionnaire, the government will have to provide a list of SOEs which the government</p>

owned enterprises  
(SOEs)

considers the five largest SOEs. Such SOEs may be incorporated or non-incorporated entities. The benchmarks will be applied to the SOEs indicated by the government.

The final number of points awarded for this benchmark will depend on how many of the five largest SOEs meet each of the two requirements of the benchmark.

This element requires all vacancies to be advertised online and provide any eligible candidate with the possibility to apply. The country may be found non-compliant if, for example, insufficient time was provided to apply, or if the publication was made in a way to limit its reach to possible candidates. The eligibility requirements should be defined by the national legislation and will not be checked by the monitoring; “based on merit” means that decisions on shortlisting candidates and winning candidates are made because of their merit (experience, skills, integrity) and not other considerations, like political or personal preferences, nepotism, etc. This element will not be applicable to the SOEs where no board appointments were made during the reporting year (it will be applicable, if at least one board appointment took place during this period).

Independent members are individuals who are not directly representing any particular stakeholder interest in the company, but who are sought to bring certain skills and competencies to the board. They should be free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.

Each element (A-B) is scored separately. Country gets

	<p>4.2. CEOs in the five largest SOEs:</p> <ul style="list-style-type: none"> <li>A. Are appointed through a transparent procedure which involves online publication of vacancies and is open to all eligible candidates;</li> <li>B. Are selected based on the assessment of their merits (experience, skills, integrity).</li> </ul>	<p>points for each compliant SOE.</p> <p>The final number of points awarded for this benchmark will depend on how many of the five largest SOEs meet each of the two requirements of the benchmark.</p> <p>This element requires all vacancies to be advertised online and provide any eligible candidate with the possibility to apply. The country may be found non-compliant if, for example, insufficient time was provided to apply, or if the publication was made in a way to limit its reach to possible candidates. The eligibility requirements should be defined by the national legislation and will not be checked by the monitoring.</p> <p>Merit-based selection means that decisions on shortlisting candidates and winning candidates are made because of their merit (experience, skills, integrity) and not other considerations, like political or personal preferences, nepotism, etc.</p> <p>This element will not be applicable to the SOEs where no CEO appointments were made during the reporting year.</p> <p>Each element (A-B) is scored separately. Country gets points for each compliant SOE.</p>
	<p>4.3. The five largest SOEs have established the following anti-corruption mechanisms:</p> <ul style="list-style-type: none"> <li>A. A compliance programme that addresses SOE integrity and prevention of corruption;</li> <li>B. Risk-assessment covering corruption.</li> </ul>	<p>The final number of points awarded for this benchmark will depend on how many of the five largest SOEs meet each of the two requirements of the benchmark.</p> <p>Each element (A-B) is scored separately. Country gets points for each compliant SOE.</p>

	<p>4.4. In the five largest SOEs, the anti-corruption compliance programme includes the following:</p> <ul style="list-style-type: none"> <li>A. Rules on gifts and hospitality;</li> <li>B. Rules on prevention and management of conflict of interest;</li> <li>C. Charity donations, sponsorship, political contributions;</li> <li>D. Due diligence of business partners;</li> <li>E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme.</li> </ul>	<p>The benchmark requires that the compliance programmes in the five largest SOEs include a number of key elements. The final number of points awarded for this benchmark will depend on how many of the five largest SOEs meet each of the five requirements of the benchmark.</p> <p>Each element (A-E) is scored separately. Country gets points for each compliant SOE.</p>
	<p>4.5. The five largest SOEs disclose via their websites:</p> <ul style="list-style-type: none"> <li>A. Financial and operating results;</li> <li>B. Material transactions with other entities;</li> <li>C. Amount of paid remuneration of individual board members and key executives;</li> <li>D. Information on the implementation of the anti-corruption compliance programme;</li> <li>E. Channels for whistleblowing and reporting anti-corruption violations.</li> </ul>	<p>The benchmark requires the five largest SOEs to have disclosed in practice during the previous calendar year the five specified types of information. The final number of points awarded for this benchmark will depend on how many of the five largest SOEs meet each of the five requirements of the benchmark.</p> <p>Each element (A-E) is scored separately. Country gets points for each compliant SOE.</p>

#### Main reference materials

- ACN Summary Report “Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2016-2019”, <http://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf>.
- ACN Thematic Study “Business Integrity in Eastern Europe and Central Asia”, 2016, [www.oecd.org/corruption/acn/businessintegrity](http://www.oecd.org/corruption/acn/businessintegrity).
- Annex II of the 2009 Recommendation to the OECD Convention on combatting bribery of foreign public officials in international business transactions: Good Practice Guidance on Internal Controls, Ethics and Compliance, <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44884389.pdf>.
- Anti-corruption ethics and compliance handbook for business, OECD/UNDOC/World Bank, 2013, <http://www.oecd.org/corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm>.
- G20/OECD Principles on Corporate Governance, OECD (2015), <http://dx.doi.org/10.1787/9789264236882-en>.
- OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition, <http://dx.doi.org/10.1787/9789264244160-en>.
- OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, OECD (2019), [www.oecd.org/corporate/Anti-Corruption-Integrity-Guidelines-for-SOEs.htm](http://www.oecd.org/corporate/Anti-Corruption-Integrity-Guidelines-for-SOEs.htm).

- G20 High-Level Principles on Beneficial Ownership Transparency, <https://star.worldbank.org/document/g20-high-level-principles-beneficial-ownership-transparency>.
- 5th EU Money Laundering Directive - Beneficial Ownership and Transparency, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L0843&from=EN>.
- FATF, 2019, Best Practices on Beneficial Ownership for Legal Persons, [www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf](http://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf).



## PERFORMANCE AREA 5: INTEGRITY IN PUBLIC PROCUREMENT

### Introduction

Public procurement has a significant impact on economic performance and development of country. Public contracts in many countries are the basis for the provision of the everyday services to the public (such as energy, transport and communication) and for the essential public sector projects (such as infrastructure, healthcare and education). With significant amounts of public money involved, public procurement arguably creates the big risk of corruption. The volume, number and complexity of transactions involved combined with the high level of discretion of procurement and approving officials, provide many incentives and opportunities for corruption. Companies and business associations in the IAP countries see public procurement, among the sectors with the highest corruption risk (OECD (2020), 167 p.).

There are a number of international instruments establishing standards in this area. Council of Europe Resolution (97) 24 adopted by the Committee of Ministers on 6 November 1997 "On the twenty guiding principles for the fight against corruption" agreed that to fight corruption it is essential to adopt appropriately transparent procedures for public procurement that promote fair competition and deter corruptors.

The UN Convention against Corruption (Art. 9) stipulates that each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.

OECD (2015) Recommendation on Public Procurement recommends that Adherents preserve the integrity of the public procurement system through general standards and procurement-specific safeguards.

The IAP monitoring benchmarks are based on the international and regional instruments establishing standards in this area. The benchmarks also take into account previous monitoring round reports of IAP and the IAP Summary report for 2016-2019 which has summarized relevant recommendations.

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. The public procurement	1.1. Public procurement legislation covers the acquisition of works, goods and services concerning public interests by:	Public procurement legal framework provides for better oversight of public spending rather than leaving it outside

<p>system is comprehensive</p>	<p>A. Publicly owned enterprises, including SOEs and municipality owned enterprises;  B. Utilities and natural monopolies;  C. Non-classified area of the national security and defence sector.</p>	<p>of set of regulation, structured control and monitoring. The areas exempt from the scope of the primary public procurement legislation should represent a small part of public sector economy. Benchmark aims to assess if the scope of public procurement regulation embrace the public sector as a whole in principle.</p> <p>“Public procurement legislation” means public procurement law, or any other overarching master legal instrument (e. g. government legislation, etc.) governing public procurement in the country. Special laws regulating procurement of procuring entities indicated by the A, B, and C elements of the benchmark will also be considered for evaluation.</p> <p>“Acquisition concerning public interests” means areas of economic activities funded by public funds either fully or partly. The benchmark refers to the procurement of the entities covered by A, B, C (a) fully or partially funded either by the national/sub-central budget funds and (b) by the own funds of the entities covered by A, B, C regardless of the source of these funds.</p> <p>“Publicly owned enterprises” - state or municipality owned enterprises means an unincorporated state or municipality company in any legal form and corporate entities (joint stock companies, limited liability companies, any partnerships limited by shares) in which the state or municipality owns the majority stake. Municipality refers to any type of local government (community).</p> <p>“Utilities” means public service authorities or undertakings majority owned or controlled by national or local governments or government agencies or more than 50 percent funded from budget of national or local governments that operate with special or exclusive rights or as monopolies providing to public water management,</p>
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		<p>energy (electricity, gas, heat), transport, post, telecommunication or other similar services.</p> <p>“Natural monopolies” means undertakings majority owned or controlled by or more than 50 percent funded from the budget of national or local governments or government agencies that operate with exclusive or monopoly rights in an industry in which high infrastructural costs relative to the size of the market and/or state regulation barriers prevent competition (e. g. railway transport, traditional post service).</p> <p>“Public procurement legislation covers the non-classified area of the national security and defence sector” means that public procurement legislation, either through general public procurement law or special law, covers non-classified procurement of security and defence sector.</p> <p>Each element (A-C) is scored separately.</p>
	<p>1.2. The legislation clearly defines specific, limited exemptions from the competitive procurement procedures.</p>	<p>Public procurement legislation should establish competitive procedures as the default public procurement methods. “Competitive procurement procedures” means competition based procurement method based on public and unrestricted solicitation to maximize the potential pool of participating suppliers and contractors, and ensuring that the procedure does not restrict the number of participants below the number required to ensure that they in fact compete (Guide to Enactment of the UNCITRAL Model Law on Public Procurement).</p> <p>Exemptions from the competitive procurement procedures should be modelled on the international standards (e. g., such as UNCITRAL Model Law on Public Procurement). If there are exemptions which are not provided for in UNCITRAL Model Law on Public Procurement, they should be (a) limited and based on specific objective conditions</p>

		<p>that makes competitive public procurement procedures unworkable when such conditions cannot be influenced nor foreseen by properly acting procuring entity, (b) require enhanced transparency and compulsory justification of the specific (particular) exceptional circumstances in case of application of exemptions from the competitive procurement procedures.</p> <p>Exemptions from the competitive procurement procedures shall be established by public procurement legislation. Benchmark allows only of legal exemptions from the competitive procurement procedures. Any possibility of the administrative decision on such exemption(s) will be considered as not compliant with the benchmark.</p> <p>Legislation shall require using competition based procurement method as default and limit procuring entity's discretion to invoke limited competition procurement methods by providing clear guidance on which limited competition based procurement methods can be exceptionally used in specific strictly regulated circumstances.</p> <p>Exemptions from the competitive procurement procedures shall be limited to ensure minimal use of such procurement methods resulting into a small part of public sector fund utilisation. The list of grounds for use of procurement methods that limit competition shall be finite and limited to a few objectively necessary exceptional circumstances. Any open ended list or provision with the reference to other legislation broadening grounds of exemptions from the competitive procurement procedures will not be considered as limited.</p>
	1.3. Public procurement procedures are open to foreign legal or natural persons.	Benchmark assesses if legal or other impediments (administrative, technical, etc.) do not prevent foreign legal

		<p>or natural persons from participation in public procurement. In particular, the benchmark verifies that foreign legal or natural persons can participate in procurement, conducted either in traditional or e-procurement form, without registering a domestic entity in the country.</p> <p>Minimum eligibility requirements established in the primary public procurement legislation shall be the same for domestic and foreign legal and natural persons and shall not prevent participation of foreign legal or natural persons in public procurement.</p> <p>Any conditions individually established by procuring entities for participation shall be limited to those that are essential to ensure the capability of the eligible legal or natural person to fulfil the contract in question. Available opinion of governmental and non-governmental stakeholders, information received during the on-site visit and independent research can be applied to evaluate this aspect of the benchmark.</p> <p>Openness of the public procurement procedures to foreign legal or natural persons, besides the legal public procurement framework free of barrier also means absence of administrative, technical and other hurdles that apply to or affect solely foreign entities (e. g. too tight deadlines to submit prequalification applications or tender proposals after publication of invitation; e-signature issuing conditions requiring registration as taxpayer in the country; requiring bidders to register on a government registry of suppliers).</p> <p>Internationally accepted practices such as domestic preference clauses, procuring entities' right to require to present declaration of product origin, special clauses on participation of foreign entities in public procurement in utilities or national security and defence sectors if applied</p>
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		properly within the limits of universally accepted primary purpose of such practices shall not be considered as impediments for participation of foreign legal or natural persons in public procurement.
2. The public procurement system is competitive	<p>2.1. Direct (single-source) contracting represents:</p> <ul style="list-style-type: none"> <li>A. Less than 10% of the total procurement value of all public sector contracts (100%);</li> <li>B. Less than 20% of the total procurement value of all public sector contracts (70%);</li> <li>C. Less than 30% of the total procurement value of all public sector contracts (50%).</li> </ul>	<p>Direct contracting (single-source) for the purposes of monitoring means any procurement method that provide for a direct selection of suppliers. National classification of procurement methods if in line with the internationally recognised public procurement standards of the country will be applied for the evaluation of data for this benchmark.</p> <p>If a proposal from only one participant was received as result of a competitive public procurement procedure such contract shall not be included into the statistical data provided for the evaluation of this benchmark.</p> <p>The benchmark refers to single-source procurement above the threshold set by the law, i. e. small value procurements are not included for the evaluation of the benchmark.</p> <p>The evaluation team will deduct some share of single-source contracting value if the authorities of the country provide undisputable justification that the application of single-source contracting was determined by the extraordinary circumstances of national level could not be foreseen by properly acting procuring entities.</p> <p>The one-year budgetary funding cycle practice will not be considered as justification for the application of exemptions of competition based procurement for projects with more than one-year timeline.</p> <p>Proportion of procurement procedures that were negotiated with a company without any call for bids that is less than ≤5% is considered as acceptable among EU single market countries while ≥10% is considered as the level raising</p>

		<p>concerns. The recent survey showed that, in 2020, the proportion of procurement with “no calls for bids” was lower than 10% in 22 of 30 single market countries, lower than 5% in 10 countries and constituted 6% in 4 countries (<a href="https://public-procurement-single-market-scoreboard.europa.eu">Public Procurement   Single market scoreboard (europa.eu)</a>).</p> <p>This benchmark includes three alternative options that are scored differently. The smaller share of direct (single-source) contracting in the total procurement value of all public sector contracts, the higher score is attributed to the respective option. Element A is scored 100% of the maximum score as it represents the highest standard, as it ensures minimal share of direct contracting which as a method of procurement has limited transparency and is not competition based. Therefore, it does not ensure better value for money. Elements B and C are scored 70% and 50% of the maximum score for this benchmark accordingly.</p>
	<p>2.2. The average number of proposals per call for tender is:</p> <ul style="list-style-type: none"> <li>A. More than 3 (100%);</li> <li>B. More than 2.5 (70%);</li> <li>C. More than 2 (50%);</li> <li>D. More than 1.5 (30%);</li> <li>E. Less than 1.5 (0%).</li> </ul>	<p>The bigger number of proposals ensures higher competition and therefore the better terms for procuring entity to get better value for money. Contracts with a single bid are the ones with insufficient competition and therefore not achieving the final aim of public procurement policy, i.e. the best value for money.</p> <p>The overall impact of reduced competition in procurement is hard to calculate. One study by PwC, a consultancy, found that it increased costs by 2% to 15% depending on the sector (<a href="https://www.economist.com/europe/2016/11/19/rigging-the-bids">https://www.economist.com/europe/2016/11/19/rigging-the-bids</a>).</p> <p>Less than 10% share of procurement with single bidder is considered as acceptable among EU single market countries while <math>\geq 20\%</math> is considered as the level raising</p>

		<p>concerns. In 2017-2020, the average share of procurement with single bidder was lower than 20% in 14 of 29 EU single market countries and that was pointed as the worrying sign of insufficient competition (<a href="#">Public Procurement   Single market scoreboard (europa.eu)</a>).</p> <p>Three proposals per call for tender ensures basic level of competition and decreases risk of illegal agreement between tender participants.</p> <p>This benchmark includes five alternative options that are scored differently. The bigger the average number of proposals per call for tender, the higher score is attributed to the respective option. Element A is scored 100% of the maximum score as it represents the highest standard, as it ensures sufficient average number of proposals to ensure basic level of competition and respectively better value for money. Remaining elements B-E reflect lower level of competition and are scored from 70% to 0% of the maximum score for this benchmark accordingly.</p>
	<p>2.3. The threshold value for goods contracts:</p> <ul style="list-style-type: none"> <li>A. Less than EUR 2,500 equivalent (100%);</li> <li>B. Less than EUR 5,000 equivalent (50%);</li> <li>C. Less than EUR 10,000 (30%);</li> <li>D. More than 10,000 (0%).</li> </ul>	<p>UNCITRAL Model Law on Public Procurement refers to threshold amounts below which certain requirements of the Model Law are relaxed (Guide to Enactment of the UNCITRAL Model Law on Public Procurement, 12 p.). National procurement laws usually set individual threshold value for procurement of goods, services and works in order to allow application of some kind of simplified procurement rules and regulations under a certain threshold, though with some elements of competitive tendering.</p> <p>“The threshold value for goods contracts” means the threshold value for procurement of goods set by the procurement law of the country above which full legal public procurement requirements including for publication and</p>



		<p>competition (e.g., full open tender requirements) are applicable.</p> <p>Based on data submitted by 31 country adherent to the 2015 OECD Recommendation of the Council on Public Procurement and 3 non-adherent countries, in 2018, the national threshold (i. e. low-value contracts with some kind of simplified procurement rules and regulations though with some elements of competitive tendering) varied from EUR 12 100 in Israel to EUR 143 650 in Iceland</p> <p><a href="https://one.oecd.org/document/C(2019)94/FINAL/en/pdf">https://one.oecd.org/document/C(2019)94/FINAL/en/pdf</a>.</p> <p>The current range of values of the A-D elements of the benchmark are based on the examples of national regulations of OECD and EU and other countries adjusted to the average economy size of the IAP countries (<a href="https://www.worldometers.info/gdp/gdp-per-capita/">https://www.worldometers.info/gdp/gdp-per-capita/</a>).</p> <p>This benchmark includes four alternative options that are scored differently. The lower threshold value for contracts of goods, the higher score is attributed to the respective option. Element A is scored 100% of the maximum score as it represents the highest standard with the lowest threshold value for the goods contracts and ensures that relaxed publication and competition requirements apply only for relatively small value procurement of goods. Elements B-D are scored from 50% to 0% of the maximum score for this benchmark accordingly.</p>
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<p>3. Dissuasive and proportionate sanctions are set by legislation and enforced for procurement related violations</p>	<p>3.1. Conflict of interest in public procurement is covered by legislation and applied in practice:</p> <ul style="list-style-type: none"> <li>A. There are explicit conflict of interest regulations established by law covering all public employees involved in the procurement cycle (from planning to contract completion stage);</li> <li>B. Sanctions are routinely imposed on public employees for violations of conflict of interest rules in public procurement;</li> <li>C. There are explicit conflict of interest regulations established by law covering all private sector actors involved in procurement.</li> </ul>	<p>Comments to benchmark 1.1 of PA 2 “Conflict of interest and asset declarations” apply here.</p> <p>Element A of the benchmark aims to evaluate the legal regulation of COI of public employees in public procurement.</p> <p>COI regulation can be in general COI law, public procurement or any other special law. The country must show the existence of explicit COI regulations covering all public employees involved in the procurement cycle established in the law.</p> <p>As many contacts between private and public sector players are inherent in public procurement, all public employees, including the ones from procuring entities and controlling/approving authorities, involved in the procurement cycle (from planning and preparation of public procurement to contract implementation and public procurement control) shall be explicitly covered by COI regulations.</p> <p>Element B of the benchmark aims to test the enforcement of COI regulation in public procurement in practice.</p> <p>According to the general definitions, “routinely imposed” means “applied or used systematically as a usual practice. The application or use is systematic when it includes at least 3 cases per year.” For the element B of the benchmark, the country will need to provide at least 3 cases of sanctions imposed on public employees for violations of COI rules in public procurement. It can be any type of COI violation as reflected benchmark 2.1 of PA 2 “Conflict of interest and asset declarations”, namely (A) Failure to report an ad hoc conflict of interest; (B) Failure to resolve an ad hoc conflict of interest; (C) Violation of restrictions related to gifts or hospitality; (D) Violation of</p>
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		<p>incompatibilities; (E) Violation of post-employment restrictions.</p> <p>The monitoring team will not check the quality of the offences or effectiveness of sanctions imposed. The benchmark does not require a specific type of liability (for example, administrative or criminal).</p> <p>“Sanctions imposed” means the decision to apply sanction made by the final decision-making body. For example, if an administrative body (for example, an anti-corruption agency) must detect the offence, collect and record evidence and then present the case to court for imposing a sanction, the benchmark takes into account the court decision, not of the administrative agency. The first instance court decision is sufficient in this situation. For criminal offences, the benchmark takes into account the first instance court sentences, not the suspicion or charges brought by the investigative authority or prosecutor.</p> <p>If the data about 3 cases of sanctions imposed on public employees for violations of COI rules in public procurement is not available and not provided to the monitoring team, it will be assumed that the country is not compliant with the benchmark.</p> <p>Sanctions imposed on public employees for violation of COI rules in public procurement include both sanctions imposed based on the general regulation of COI and special COI regulation in public procurement if existent.</p> <p>Element C of the benchmark aims to evaluate the legal regulation of COI of private actors in public procurement.</p> <p>Private interests can influence public procurement, for example, through advisory groups established by public authorities. An advisory or expert group refers to any committee, board, panel, task force, or similar group, or any</p>
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subcommittee or other subgroup thereof that provides national authorities and procuring entities with advice, expertise, or recommendations on public procurement. They usually consist of representatives from public authorities, the private sector, and/or civil society organisations.

There may be cases where the contracting authority contracted, for example, outside expertise to help prepare documents to be used in an award procedure (e. g. drafting the tender specifications of a subsequent procurement procedure) and where the service provider themselves decide to take part in the same award procedure as a participant. In accordance with the law, the participant shall be obliged to declare its involvement in the preparation of documents used the award procedure or any other of the procurement situations.

Element C encompasses also so called “professional conflicting interests”, i. e. when economic operators participating in procurement procedures have conflicts of interest that may negatively affect the performance of the contract. This should be treated at the selection stage in order to prevent cases where, for example, an economic operator is awarded a contract to evaluate a project in which they have participated or to audit accounts which they have previously certified as, in these cases, the economic operator has already been involved in the precise subject matter of the tender. These situations often arise in evaluation or audit framework contracts, where the contractor can have a professional conflicting interest for a specific contract.

Other examples of the COI in public procurement on the side of private operators: (a) company owns property next to the planned site for development under the public

		<p>contract, the value will be affected; (b) company has clients or investors with opposing interests to that of the contracting authority; (c) a subcontractor is participating in more than one bid, and has access to sensitive details about the (Conflicts of Interest under EU procurement law procurement law: OLAF/Freedom House seminar, 2015).</p> <p>For example, Contracts Law (Law 9/2017) of Spain forbids companies from contracting with the administration if any high-ranking public official or member of government has an ownership interest of 10% or more in the company (<u>World Bank Document (unodc.org)</u>, 10 p.).</p> <p>To prevent COI of private sector actors the law shall establish the explicit conflict of interest regulations covering all private sector actors involved in the procurement in order to ensure fair competition.</p> <p>Elements (A-C) are scored separately.</p>
	<p>3.2. Sanctions are routinely imposed for corruption offences in public procurement.</p>	<p>“Routinely imposed” is explained in the general definitions and means that there were at least 3 cases of sanctions imposed for corruption offences in public procurement in the previous year.</p> <p>The national authorities will be requested to provide statistics on the first instance convictions for corruption offences in public procurement. The absence of such general statistics (for example, because the national statistical recording is organised differently), however, will not be a ground for non-compliance.</p> <p>The authorities must provide at least 3 examples of specific cases of convictions for corruption offences in public procurement. The examples of cases are required to check that the reported convictions concern the respective offences. The examples should include sufficient details to</p>

		<p>ascertain the factual and legal grounds for the conviction. If such examples of cases are not provided, the monitoring will assume that the country is not compliant with the benchmark.</p> <p>The benchmark 3.2. uses the offences as defined in the international conventions, first of all, the UN Convention Against Corruption. However, under this indicator, the monitoring will not check the substance of national definitions and analyse their compliance with the international standards, because such an analysis has already been conducted in the previous monitoring rounds of OECD/ACN Istanbul Action Plan. The monitoring team will check, however, that the reported convictions were for the respective offences as they are understood in the international standards.</p>
	<p>3.3. The law requires to debar from the award of public sector contracts:</p> <ul style="list-style-type: none"> <li>A. All natural persons convicted for corruption offences;</li> <li>B. All legal persons and affiliates of legal persons sanctioned for corruption offences.</li> </ul>	<p>The benchmark aims to determine if debarment of natural and legal persons convicted for corruption offences is established by the law.</p> <p>“Corruption offences” is defined in the general definitions. The benchmark does not require that the debarment is provided for all offences that are considered corruption according to the definitions.</p> <p>“Convicted for corruption offences” means final convictions (entered into legal force) for the respective offences.</p> <p>Debarment systems based on other grounds (e. g. list of unreliable suppliers) will not be considered. The benchmark also does not cover cases of bid rigging and other anti-competitive behaviour.</p> <p>Specifics of country’s legal system will be considered while applying this benchmark. If the country’s law does not establish liability of legal persons for corruption offences, it</p>

		<p>will not affect the compliance with the element B of the benchmark, i. e. element B will be considered as not applicable.</p> <p>“All natural persons” and “All legal persons” applies both to domestic and foreign legal and natural persons taking part in public procurement as (potential) bidders, suppliers, contractors.</p> <p>Elements (A-B) are scored separately.</p>
	<p>3.4. Debarment of all legal and natural persons convicted for corruption offences from the award of public sector contracts is enforced in practice:</p> <ul style="list-style-type: none"> <li>A. At least one natural person convicted for corruption offences was debarred;</li> <li>B. At least one legal person or an affiliate of a legal person sanctioned for corruption offences was debarred.</li> </ul>	<p>The benchmark aims to test the enforcement of debarment regulations in public procurement in practice.</p> <p>Comments to benchmark 3.3 apply here.</p> <p>The national authorities will be requested to provide statistics on debarment of all legal and natural persons convicted for corruption offences from the award of public sector contracts. The absence of such general statistics (for example, because the national statistical recording is organised differently), however, will not be a ground for non-compliance.</p> <p>The authorities must provide at least one example of a natural person (for Element A) and at least one example of a legal person or an affiliate of a legal persons (for Element B) convicted (sanctioned) for corruption offence that were suspended from participation in public procurement and award of public sector contracts in the previous year. The examples of debarment cases are required to check that the reported convictions concern the respective offences. The examples should include sufficient details to ascertain the factual and legal grounds for the debarment. If such examples of cases are not provided, the monitoring will assume that the country is not compliant with the benchmark.</p>

		<p>Specifics of country's legal system will be considered while applying this benchmark. If the country's law does not establish liability of legal persons for corruption offences, it will not affect the compliance with the element B of the benchmark, i. e. element B will be considered as not applicable.</p> <p>Elements (A-B) are scored separately.</p>
<p>4. Public procurement is transparent</p>	<p>4.1. An electronic procurement system, including all procurement methods:</p> <ul style="list-style-type: none"> <li>A. Is stipulated in public procurement legislation;</li> <li>B. Is accessible for all interested parties in practice.</li> </ul>	<p>Benchmark looks at the scope of application of e-procurement as established by legislation (A) and its functioning and accessibility in practice (B).</p> <p>E-procurement refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process (OECD, (2015). Recommendation on Public Procurement. 6 p.).</p> <p>Procurement below the threshold will not be considered for the evaluation of this benchmark.</p> <p>Element A of the benchmark aims to evaluate the legal regulation of e-procurement.</p> <p>Legislation should establish that all procurement methods stipulated in public procurement legislation for acquisition of goods, services and works should be conducted by all procuring entities in the form of e-procurement. If one or more procurement method(s) stipulated in public procurement legislation are excluded from e-procurement by legislation, the element A of the benchmark will not be met.</p> <p>If the public procurement legislation establishes specific procurement methods for the acquisition of classified goods, services or works as defined by the law, such</p>



		<p>methods will not be considered for the evaluation of this benchmark.</p> <p>Element B looks into whether all procurement encompassed by e-procurement system are functional and accessible for all interested parties in practice. Application of e-procurement should not create any obstacle to any of potential participants to get access to the system and participate in procurement. If one or more e-procurement method(s) are not operating properly or has any obstacle that prevents access to any of interested parties in practice, the element B of the benchmark will not be met.</p> <p>Elements (A-B) are scored separately.</p>
	<p>4.2. The following procurement stages are encompassed by an electronic procurement system in practice:</p> <ul style="list-style-type: none"> <li>A. Procurement plans;</li> <li>B. Procurement process up to contract award, including direct contracting;</li> <li>C. Lodging an appeal and receiving decisions;</li> <li>D. Contract administration, including contracts modification.</li> </ul>	<p>Only stages of procurement methods that are conducted in the electronic procurement system will be evaluated. Stages of the public procurement methods that are not encompassed by the e-procurement system will not be considered for the evaluation of this benchmark.</p> <p>Comments to benchmark 4.1. apply here.</p> <p>“Procurement stages are encompassed by an electronic procurement system in practice” means that all essential public procurement data of each stage listed by elements A-D is submitted, collected, stored, managed and communicated through an electronic procurement system.</p> <p>“Procurement plans” means plan of expenditure issued by the procuring entity to establish its procuring needs over a certain period. Any updates and changes of procurement plan shall be reflected at the e-procurement system as it is introduced in timely manner during the year.</p> <p>“Procurement process up to contract award” means that all the respective stages (procedures) up to and including contract award of individual procurement method stipulated</p>

		<p>by the procurement legislation (including, at least, solicitation and notices of procurement, bidding/transaction of public procurement procedures and award notices when applicable, as well as digital contract signing) shall be conducted in e-procurement system.</p> <p>“Lodging an appeal and receiving decision” means that the essential information about the appeals (at least notification about appealed procurement, information about substance and outcome of appeal reflecting precedents of review of appeals) shall be processed in e-procurement system or other e-government system (centralised procurement website, e-court system, etc.) to which e-procurement system directs public procurement participants.</p> <p>Contract administration shall be done in e-procurement system, including contract modifications, invoicing (or the minimum payment related data), information about completion of the contract including whether the contract was implemented within the initial timeline and the initial value (price).</p> <p>Elements (A-D) are scored separately.</p>
	<p>4.3. The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable):</p> <ul style="list-style-type: none"> <li>A. Procurement plans;</li> <li>B. Complete procurement documents;</li> <li>C. The results of evaluation, contract award decision and final contract price;</li> <li>D. Appeals and results of their review;</li> <li>E. Information on contract implementation.</li> </ul>	<p>Publishing comprehensive information on public procurement enables public scrutiny of national public spending through procurement. Access to information and transparency must be maintained throughout the entire procurement cycle from planning to the contract implementation phase except when the law excludes information from disclosure on limited justified grounds.</p> <p>“Publicly available online” means that the information is available online for access by general public at no cost without any other barriers (e. g. technological).</p>

		<p>Public procurement data shall include data about acquisition of works, goods and services regulated by public procurement and other special procurement legislation, including procurement of publicly (state and municipality) owned enterprises, utilities and natural monopolies, non-classified area of the defence sector.</p> <p>The idea of the benchmark is to promote user friendly overall source of information about public procurement (elements A-F). Information should be consolidated in one place. Preferably it should be central procurement portal so that even not experienced stakeholder could easily find necessary information. A centralised online portal is promoted by the Methodology for Assessing Procurement Systems (MAPS) OECD (2018). If any information listed by elements of the benchmark is published not on a central procurement portal but other portal and central procurement portal direct users aiming for some particular information to that portal, the country would be considered as compliant.</p> <p>Procurement data shall be made public free of charge. Only the nominal registration or subscription to procurement database fee may be applicable in order to cover costs of management of these data.</p> <p>All data published as documents should be downloadable.</p> <p>“Procurement plans” means plan of expenditure issued by the procuring entity to establish its procuring needs over a certain period of time. Any updates and changes of procurement plan shall be published as it is introduced in timely manner during the year.</p> <p>Procurement document means a document issued by the procuring entity that sets out the terms and conditions of the given procurement (OECD (2018), Methodology for</p>
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		<p>Assessing Procurement Systems (MAPS). 78 p). The procuring entity shall set out in the tender documents all requirements that submissions must meet in order to be considered responsive and the manner in which those requirements are to be assessed.</p> <p>Complete procurement documents comprise bidding documents (tender documents) and call for tender. Bidding documents means documents presenting the terms of tender, the general conditions of the contract, and the tender specifications. Call for tender means the public invitation to submit bids to supply procured subject matter.</p> <p>In case of procurement methods with limited competition a notice of the procurement shall be published containing at a minimum the following information: information about procuring entity; a summary of the principal required terms and conditions of the procurement; declaration whether the participation of suppliers or contractors in the procurement proceedings is limited and on which ground; method of procurement to be used.</p> <p>Making data on the outcome of the tendering process publicly available and publishing the award notice potentially increase private sector's participation in the oversight process, including appeal possibility. Upon the entry into force of the procurement contract, element C requires prompt publication of minutes resulting from the tender evaluation meetings or reports of bids' evaluation (or summaries thereof) (also as required by the Methodology for Assessing Procurement Systems (MAPS) OECD (2018), award decision specifying the name of the supplier (or suppliers) or contractor (or contractors) to which the procurement contract or the framework agreement was</p>
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		<p>awarded and supporting information, and contract price (if applicable).</p> <p>“Appeals and results of their review” means that at least the following information is publicly available: (a) annual number of appeals received and reviewed, number of decisions made by the type of a decision, (b) essential information about the content and outcome of appeals; (c) judicial decisions and administrative rulings with precedent value. Appeals and the results of their review shall be made public starting with the notification of appeal received and ending with the publication of decision with the justification. Publication of the decisions of the review body (-ies) informs public procurement participants not only about results of complaint process but also about criteria and considerations taken into account to reach that decision. This helps to develop solid public procurement practice. It may also induce consistency and impartiality of the review body and therefore enhance trust and confidence in complaint mechanisms.</p> <p>Information on contract implementation should comprise at least procurement contract/agreement data published taking into account the legislation on classified, confidential or otherwise restricted for publication information, as well as information on the essential contract amendments such as changes of contract value, its scope and quality requirements, notice of termination or extension of contract (with respective justification), date of completion of contract, final contract price, final quantity/scope of goods, services or works acquired with essential quality requirements.</p> <p>Elements (A-E) are scored separately.</p>
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<p>4.4. The following up-to-date procurement data are publicly available online on a central procurement portal free of charge (except for nominal registration or subscription fee, where applicable), in the machine-readable format:</p> <ul style="list-style-type: none"> <li>A. Procurement plans;</li> <li>B. Complete procurement documents;</li> <li>C. The results of evaluation, contract award decision and final contract price;</li> <li>D. Appeals and results of their review;</li> <li>E. Information on contract implementation.</li> </ul>	<p>Comments to benchmark 4.3. apply here. Procurement data listed by the elements A-F shall be published online in machine-readable format that can be re-used. Machine-readable data must be structured data and in data format that that can be automatically read and processed by a computer, such as CSV, JSON, XML, etc. PDFs are not considered machine-readable data. See further technical details at <a href="https://opendatahandbook.org/glossary/en/terms/machine-readable">https://opendatahandbook.org/glossary/en/terms/machine-readable</a>.</p> <p>Elements (A-E) are scored separately.</p>
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## PERFORMANCE AREA 6: INDEPENDENCE OF JUDICIARY

### Introduction

The judiciary plays a crucial role in democracies and in sustaining the rule of law. Judicial corruption erodes the legitimacy of public authorities, undermines the judicial system of the country and fosters impunity. Effective anti-corruption efforts are impossible in a system where judicial institutions lack integrity and are vulnerable to undue influence. A “clean” judiciary requires robust safeguards of judicial independence, integrity, and accountability. Building integrity in the judiciary is challenging as it requires finding a right balance between accountability and judicial independence.

There are many international instruments establishing standards in this area, which are used by the IAP monitoring as benchmarks. The UN Convention against Corruption (Art. 11) states, that bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary.

Indicators of this PA focus on independence of judiciary. To avoid duplication, issues of integrity (conflict of interest, asset declarations) and sanctioning for corruption in judiciary are covered in other Performance Areas. This Performance Area applies to judges of general jurisdiction courts and does not apply to judges of the constitutional jurisdiction.

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. Merit-based appointment of judges and their tenure is guaranteed in law and practice	1.1. Irremovability of judges is guaranteed: A. Judges are appointed until the legal retirement age (100%); OR B. Clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the legislation and used in practice (70%).	Irremovability of judges is an important safeguard of their independence. Any confirmation procedures for judges who are already in office create a risk for the judicial independence and impartiality. Element A of this benchmark is scored higher (as 100% of the maximum score for this benchmark) because it is a preferable standard that countries should strive to. Element B is an alternative and, in case of compliance, is scored 70% of the maximum score for this benchmark.  If the country has preserved the initial appointment in the judicial office, then the procedure for re-appointment should comply with certain standards. It should be set in the legislation that treats such re-



	<p><i>Note: The country is compliant with one of the alternative elements A-B if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.</i></p>	<p>appointment as a confirmation in office, which means that the judge stays in office by default unless there are grounds not to confirm him/her in office.</p> <p>The country's legislation may not call such an initial appointment a probationary period, but in substance require that a judge is first appointed for a limited period, after which he/she can be appointed or confirmed for a term in office until the legal retirement age.</p> <p>"Clear criteria" and "transparent procedures" are determined in the general definitions. "<b>Clear criteria</b>" mean criteria that, in the assessment of the monitoring team, are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body.</p> <p>"<b>Transparent procedures</b>" are in place if the legislation regulates the main steps in the process and information about the outcomes of these steps is published online.</p> <p>For both elements, relevant procedures must be applied in practice.</p>
	<p>1.2. A Judicial Council or another judicial governance body plays an important role in the appointment of judges, and the discretion of political bodies (if involved) is limited:</p> <p>A. The Judicial Council or another judicial governance body directly appoints judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%);</p> <p>OR</p> <p>B. The Judicial Council or another judicial governance body prepares a proposal on the appointment of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear</p>	<p>According to the general definitions, a judicial governance body means a Judicial Council or another similar body that is set up by the Constitution or law, is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court and court administration, has a mandate defined by the law, and manages its own budget.</p> <p>If the body does not qualify as a judicial governance body according to the general definition, this benchmark and all other benchmarks in this PA which refer to the judicial governance body are scored as 0. If there are several bodies, only those that qualify as the judicial governance body according to the general definition will be evaluated under the respective benchmark.</p> <p>The political bodies (President, Parliament) should be removed from the process of appointment and dismissal of judges. If it is not possible, an independent body (a judicial governance body) should play an</p>

	<p>grounds provided in the legislation and explained in the decision (70%);</p> <p>OR</p> <p>C. The Judicial Council or another judicial governance body reviews all candidates for judicial office and makes a justified recommendation to the relevant decision-making body (50%).</p> <p><i>Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.</i></p>	<p>important role in the process, while the role and discretion of the political bodies should be minimized.</p> <p>This benchmark includes three alternative options that are scored differently. The more decisive is the role of the judicial council, the higher score is attributed to the respective option. Element A represents the highest standard, as it removes the political bodies from the decision-making process on the judicial appointment, except for a ceremonial function of endorsing the judicial council's decision. This element is scored 100% of the maximum score for this benchmark. Elements B and C are scored 70% and 50% of the maximum score for this benchmark accordingly.</p> <p>One of the elements (A-C) must apply to all judges. See note to the benchmark for situations when different elements apply to different categories of judges. If there is a category of judges to which neither of the benchmark's elements applies, then the benchmark is scored as 0.</p>
	<p>1.3. A Judicial Council or another judicial governance body plays an important role in the dismissal of judges, and the discretion of political bodies (if involved) is limited:</p> <p>A. The Judicial Council or another judicial governance body directly dismisses judges. The role of Parliament or President (if involved at all) is limited to endorsing the Council's decision without the possibility to reject it (100%);</p> <p>OR</p> <p>B. The Judicial Council or another judicial governance body prepares a proposal on the dismissal of a judge that is submitted to the Parliament or President that may reject it only in exceptional cases on clear grounds provided in the legislation and explained in the decision (70%);</p>	<p>Comments to benchmark 1.2. apply here.</p>

	<p>OR</p> <p>C. The Judicial Council or another judicial governance body reviews all proposals for dismissal of judges and makes a justified recommendation to the relevant decision-making body (50%).</p> <p><i>Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all judges. If different procedures apply to different categories of judges, the country's score is determined by the element with the lower number of points.</i></p>	
	<p>1.4. Judges are selected:</p> <p>A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply;</p> <p>B. According to merits (experience, skills, integrity).</p>	<p><b>“Competitive procedures”</b> are defined in the general definitions. Procedures are considered competitive when vacancies are advertised online, and any eligible candidate can apply. The procedure may be found to be not competitive if, for example, insufficient time was provided to apply, or the publication was made in a way to limit its reach to possible candidates. The eligibility requirements should be defined by the national legislation and will not be checked by the monitoring.</p> <p>If the country’s legislation provides for the preliminary stage of forming a pool of judicial candidates (for example, a reserve), then requirements set in the benchmark apply to formation of such pools (reserves). Candidates included in the pool should be chosen for the position based on the results of the competition and not in a discretionary way – otherwise, it would deprive the competitive selection of any sense.</p> <p><b>“According to merits”</b> means that decisions to shortlist (if applicable) and determine the winning candidates are made because of the merits of the candidates (experience, skills, integrity) and not other considerations, like political or personal preferences, nepotism, etc. To ensure that the decision is made according to merits, countries need to assess these qualities of candidates (namely, experience, skills, integrity). The monitoring will not check how the assessment was</p>

		<p>organised and its quality; it will check only that the candidate's merits were assessed and results of the assessment were used to arrive to the decision to shortlist and choose the winning candidate(s).</p> <p>Both elements require that the respective procedures are provided for in the legislation and applied in practice. If the competitive or merit-based selection does not apply to all judges of the general courts (for example, does not apply to judges of the Supreme Court), the respective element is scored as 0.</p> <p>Elements (A-B) are scored separately.</p>
	<p>1.5. Judges are promoted:</p> <p>A. Based on competitive procedures, that is when vacancies are advertised online, and any eligible candidate can apply;</p> <p>B. According to merits (experience, skills, integrity).</p>	<p>Comments to benchmark 1.4. apply here.</p> <p><b>"Promoted"</b> means appointed to position in a higher court. It does not include appointment or election to the administrative positions (for example, court presidents or chairs of chambers).</p> <p>Elements (A-B) are scored separately.</p>
<p>2. Appointment of court presidents and judicial remuneration and budget do not affect judicial independence</p>	<p>2.1. Court presidents are elected or appointed:</p> <p>A. By the judges of the respective court or by the Judicial Council or another judicial governance body;</p> <p>B. Based on an assessment of candidates' merits (experience, skills, integrity);</p> <p>C. In a competitive procedure.</p>	<p>The benchmark aims to eliminate the appointment of the court presidents by political bodies or higher judicial bodies or judicial officials.</p> <p>The best model advocated in the benchmark is election of the court presidents by judges of the respective courts. Alternatively, the Judicial Council or a similar judicial governance body (for example, a Qualification Commission) may appoint/select them.</p> <p><b>"Based on an assessment of candidates' merits"</b> – see explanation of "according to merits" in benchmark 1.4. <b>"Competitive procedure"</b> – see general definitions and comments to benchmark 1.4.</p> <p>Elements (A-C) are scored separately.</p>
	<p>2.2. The budgetary funding allocated to the judiciary:</p> <p>A. Was not less than 90% of the amount requested by the judiciary or, if less than</p>	<p>The state should provide sufficient budgetary funding for the judiciary to perform its functions independently.</p> <p>Element A checks whether the funding allocated in the state budget in the previous year was not less than 90% of the funding which the judicial</p>

	<p>90%, is considered sufficient by the judiciary;</p> <p>B. Included the possibility for the judicial representatives to participate in the consideration of the judicial budget in the parliament or the parliament's committee responsible for the budget.</p>	<p>branch has officially requested from the Government or the Parliament. If the allocated funding was less than 90% of the judicial funding request, the country would still be compliant if the judiciary itself considers the funding sufficient for performing its functions. In this case, the monitoring team will request the judicial council or another judicial governance body responsible for the judicial funding to provide its opinion on the sufficiency of the funding.</p> <p><b>“Funding allocated”</b> means funding included in the state budget and actually disbursed to the judiciary by the end of the previous year.</p> <p>Element B requires that the judicial representatives (for example, members of the judicial council or judicial administration) were provided a possibility (invited) to participate in the deliberations on the judicial budget in the parliament or its budgetary committee. If the judicial representatives had the possibility to participate but chose not to, the element is met.</p> <p>Elements (A-B) are scored separately.</p>
	<p>2.3. The level of judicial remuneration:</p> <p>A. Is fixed in the law;</p> <p>B. Excludes any discretionary payments.</p>	<p>Sufficient remuneration removes incentives for corruption when coupled with accountability (dissuasive sanctions for violations). Low salary (below the level sufficient to sustain a decent level of life) encourages corrupt practices. Sufficient remuneration does not fully remove the risk of corruption but reduces it substantially.</p> <p>The primary law should directly regulate the amount of remuneration received by judges of different levels by establishing the salary rates and all increments (element A).</p> <p>According to element B, there should be no discretionary payments payable to judges (that is bonuses, any allowances distributed through discretionary decision-making). The payments that should not exist include only discretionary payments; payments that are determined based on objective criteria (for example, the number of years served or assigned for holding an administrative position) and are applied universally to all respective judges will not be considered discretionary.</p>

		Elements (A-B) are scored separately.
3. Status, composition, mandate, and operation of the Judicial Council guarantee judicial independence and integrity	3.1. The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers.	<p>The Judicial Council or a similar judicial governance body should be set up based on the Constitution or primary law. The judicial governance body is defined in the general definitions.</p> <p>The Constitution or the primary law (or both) should define the powers of such bodies.</p> <p>If a country has more than one judicial council or a similar body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.</p>
	3.2. The composition of the Judicial Council and other judicial governance bodies includes not less than half of the judges who: <ul style="list-style-type: none"> <li>A. Are elected by their peers;</li> <li>B. Represent all levels of the judicial system.</li> </ul>	<p>The benchmark deals with the composition of the Judicial Council and other similar bodies and requires that not less than half of composition of the council or another body are judges elected by their peers representing all levels of the judicial system.</p> <p>The preferable situation under the benchmark would be when both the judicial members and non-judicial members each comprise a half of the council's overall composition; however, systems where judges are in majority while non-judicial members have a representation (see the next benchmark) will be compliant with the benchmark as well.</p> <p>"Not less than half" means that 50% or more members of the council's overall composition are judges elected by their peers.</p> <p>When assessing compliance with the benchmark, only those judicial members of the council who were elected by their peers (that is by other judges) will count. For example, if one of the judicial members of the council (for example, the Supreme Court's Chairperson) is an ex officio member who was not elected by other judges, then such a member will not count as a part of "not less than half" judicial members.</p> <p>If a country has more than one judicial council or similar body, the benchmark will be applied to all respective councils or bodies. In other</p>

		<p>words, each of such councils or bodies must comply with the benchmark for the country to be compliant.</p> <p>Elements (A-B) are scored separately.</p>
	<p>3.3. The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives).</p>	<p>There is no one standard formula for the composition of the Judicial Council. The Venice Commission in its opinions advocates for a substantial number of both judges and non-judicial members and have mentioned equal proportion.</p> <p>The benchmark encourages countries to compose at least 1/3 of the Council's composition from non-judicial members who have equal voting rights with the judicial and other members. The non-judicial members should represent the civil society or other non-governmental stakeholders mentioned in the benchmark. Therefore, non-judicial members who are public officials (for example, members of parliament or government) will not count for this benchmark.</p> <p>If a country has more than one judicial council or similar body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.</p>
	<p>3.4. Decisions of the Judicial Council and other judicial governance bodies:</p> <ul style="list-style-type: none"> <li>A. Are published online;</li> <li>B. Include an explanation of the reasons for taking a specific decision.</li> </ul>	<p>If a country has more than one judicial council or similar body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.</p> <p>Elements (A-B) are scored separately.</p>
<p>4. Judges are held accountable through impartial decision-making procedures</p>	<p>4.1. The law stipulates:</p> <ul style="list-style-type: none"> <li>A. Clear grounds for the disciplinary liability of judges that do not include such grounds as "breach of oath", "improper performance of duties", or "the loss of confidence or trust" unless the legislation breaks them down into more specific grounds;</li> </ul>	<p>The primary law should regulate grounds and main steps of the procedure for disciplinary liability of judges.</p> <p><b>"Clear grounds"</b> are defined in the general definitions. Grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body. The law should expressly state all the actions or inaction that can result in the liability. The grounds should be</p>

	<p>B. All main steps of the procedure for the disciplinary liability of judges.</p>	<p>formulated narrowly and unambiguously avoiding such general formulations as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” – if such grounds are used the legislation should break them down into more specific grounds.</p> <p>As to <b>main steps of the disciplinary procedure</b>, the law should describe at least the following main stages of the proceedings: who can initiate, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision-making is organised, what is the role of the judge in question during the proceedings). Technical procedural details may be delegated to the secondary legislation.</p> <p>While the benchmark looks primarily at the quality of the law, the practice of application will be taken into account if it helps to establish whether the law stipulates clear grounds and all main steps of the procedure for the disciplinary liability of judges.</p> <p>Elements (A-B) are scored separately.</p>
	<p>4.2. The disciplinary investigation of allegations against judges is separated from the decision-making in such cases.</p>	<p>The benchmark requires that the same body (staff) do not deal with the investigation and decision-making in the disciplinary cases against judges, as it would result in a conflict of interest. For example, judicial disciplinary inspectors may be put in charge of investigating claims against judges and initiating or starting a disciplinary case against a judge, while a judicial council or a judicial disciplinary panel decides on the allegations of judicial misconduct.</p> <p>“The CCJE considers that the procedures leading to the initiation of disciplinary action need greater formalisation. It proposes that countries should envisage introducing a specific body or person in each country with responsibility for receiving complaints, for obtaining the representations of the judge concerned upon them and for deciding in their light whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action, in which case it would pass the matter to the disciplinary authority.” (<i>Opinion no. 3 of the Consultative Council of European Judges (CCJE) on the principles and</i></p>



		<i>rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraph 68)</i>
	<p>4.3. There are procedural guarantees of the due process for a judge in disciplinary proceedings, namely the right to be heard and produce evidence, the right to employ a defence, the right of judicial appeal, and these guarantees are enforceable in practice.</p>	<p>The legislation should set the fair proceedings guarantees for judges. Such guarantees should include, as a minimum, the right to be heard and produce evidence, the right to employ a defence counsel, the right to appeal disciplinary decision in court.</p> <p>The procedural guarantees should not only be provided in the legislation, but also be enforceable in practice, that is there should be no legal or other obstacles that prevent judges from using these guarantees. However, the monitoring does not require the proof that each of the guarantees was actually used in practice.</p>
	<p>4.4. There is no criminal or administrative punishment for judicial decisions (including for wrong decisions or miscarriage of justice), or such sanctions are not used in practice.</p>	<p>Criminal or administrative punitive liability for wrong judicial decisions or miscarriage of justice may be abused and interfere with the judicial independence. It is especially relevant in countries with a strong public prosecution system, where prosecutors can initiate criminal proceedings against judges who delivered court decisions disliked by prosecutors.</p> <p>The benchmark requires to eliminate such offences from the Criminal Code or Code of Administrative Offences/Misdemeanours (if exists).</p> <p>If the offence was preserved but was not used in practice during the previous year, the country will be compliant with the benchmark as well.</p>
<p><b>Main reference materials</b></p> <ul style="list-style-type: none"> <li>• Committee of Ministers of the Council of Europe: Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, 2010, <a href="https://rm.coe.int/16807096c1">https://rm.coe.int/16807096c1</a></li> <li>• Venice Commission: reports on Independence of the Judicial System (<a href="http://www.venice.coe.int/webforms/documents/CDL-AD(2010)004.aspx">www.venice.coe.int/webforms/documents/CDL-AD(2010)004.aspx</a>), Judicial Appointments (<a href="http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e">www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e</a>), Rule of Law Checklist (<a href="http://www.venice.coe.int/images/SITE_IMAGES/Publications/Rule_of_Law_Check_List.pdf">www.venice.coe.int/images/SITE_IMAGES/Publications/Rule_of_Law_Check_List.pdf</a>) and country-specific opinions (see compilation of opinions <a href="http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2019)008-e">www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2019)008-e</a>)</li> <li>• Consultative Council of European Judges opinions (<a href="http://www.coe.int/en/web/ccje/home">www.coe.int/en/web/ccje/home</a>)</li> </ul>		

- European Charter on the Statute of Judges, 1998 ([https://rm.coe.int/ref/DAJ/DOC\(98\)23](https://rm.coe.int/ref/DAJ/DOC(98)23))
- Parliamentary Assembly of the Council of Europe, Resolution 1703 (2010) on judicial corruption, 2010 (<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17805&lang=en>)
- United Nations: Basic Principles on the Independence of the Judiciary, 1985 ([www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx)); Bangalore Principles of Judicial Conduct, 2002, ([www.unodc.org/pdf/corruption/corruption\\_judicial\\_res\\_e.pdf](http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf)); reports by the UN Special Rapporteur on the independence of judges and lawyers ([www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx](http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx))
- OSCE/ODIHR: Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, ([www.osce.org/odihr/KyivRec](http://www.osce.org/odihr/KyivRec)).
- OECD/ACN, Istanbul Action Plan monitoring report and progress updates (<https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm>)
- GRECO, Fourth Evaluation Round reports (<https://www.coe.int/en/web/greco/evaluations>).

## PERFORMANCE AREA 7: INDEPENDENCE OF PUBLIC PROSECUTION SERVICE

### Introduction

The public prosecution service has an essential role in the criminal justice system of the state and in safeguarding the rule of law. Public prosecutors should have necessary capacity, independence and integrity to effectively prosecute corruption offences and prevent corruption within the public prosecution service itself.

As noted in the opinion of the Consultative Council of European Prosecutors, the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged.

The IAP fourth round monitoring reviewed the independence and integrity of the public prosecution service in the IAP countries for the first time. The review followed available international standards and best practices and was based on the understanding that standards applicable to the judiciary and judges to a large extent can and should be applied to the public prosecution service. The new benchmarks follow this approach and further develop relevant standards using examples of best practice from the region and beyond.

Indicators of PA-7 focus on the independence of the public prosecution service. To avoid duplication, issues of integrity (conflict of interest, asset declarations) and sanctioning for corruption of prosecutors are covered in other Performance Areas.

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. Prosecutor General is appointed and dismissed transparently and on the objective grounds	1.1. A prosecutorial governance body or a committee, which is composed of non-political experts (e.g. civil society, academia, law professors, attorneys, human rights defenders), who are not public officials and are not subordinated to any public authorities, reviews the professional qualities and integrity of all candidates for the Prosecutor General and provides its assessment to the appointing body: A. The procedure is set in the legislation;	The benchmark looks into the procedure and practice of the appointment of the Prosecutor General. It promotes the involvement of non-political expert evaluation of candidates for the purposes of a merit-based appointment with minimised political influence over the process.  A prosecutorial governance body is defined in the general definitions.

	<p>B. The procedure was applied in practice.</p>	<p>The quality of the evaluation of the professional qualities and integrity carried out by a prosecutorial governance body or an expert committee does not fall into the scope of the benchmark and will not be assessed.</p> <p>The benchmark will be met if a prosecutorial governance body or an expert committee reviews the professional qualities and integrity of all candidates for the Prosecutor General and provides to the appointing body its assessment only regarding the selected candidate(s). The benchmark suggests two alternative institutional solutions: the assessment in question may be carried out either by a prosecutorial governance body or a non-political expert committee. The benchmark will be met if the required assessment is performed by such a committee even though there is the Prosecutorial Council or another prosecutorial governance body in place.</p> <p>For element A it is sufficient to have all required components of the procedure set in the legislation, while element B looks into whether all those components were applied in practice. If the Prosecutor General's appointment process did not occur in the reporting year, element B of the benchmark is not applicable. Each element (A-B) is scored separately.</p>
	<p>1.2. The procedure for pre-term dismissal of the Prosecutor General is clear, transparent and objective:</p> <ul style="list-style-type: none"> <li>A. Grounds for dismissal are defined in the law;</li> <li>B. Grounds for dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds;</li> <li>C. The law regulates the main steps of the procedure;</li> </ul>	<p>The benchmark looks into the quality of the law and does not evaluate its practical application.</p> <p>For element A to be met, the primary law or the country's constitution should provide an exhaustive list of grounds for pre-term dismissal of the Prosecutor General.</p>

D. The law requires information about the outcomes of different steps (if there are several steps) of the procedure to be published online.

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

Element C requires the primary law to regulate the main steps of the procedure of pre-term removal of the Prosecutor General from office. “Main steps” means key elements of the procedure, such as who can initiate the process and who makes the decision, how decision-making is organised, who has to give an opinion or consent or make a report (if this is a part of the procedure), the right to a fair hearing (if there is any) and other rights of the Prosecutor General. Technical procedural details may be delegated to the secondary legislation.

According to element D, the primary law should require the information about the outcomes of different steps (if there are several steps) of the procedure to be published online. These steps, for instance, may include the decision to initiate the dismissal process, the opinion provided by an expert or another body, the outcomes of the case hearing, final decision to dismiss the Prosecutor General. If the procedure does not envisage any steps, the element is not applicable.

	<p>1.3. There were no cases of dismissal of the Prosecutor General outside the procedure described in benchmark 1.2.</p>	<p>Each element (A-D) is scored separately.</p> <p>The benchmark looks into the practical application of the procedure of pre-term dismissal of the Prosecutor General.</p> <p>For the benchmark to be met, the dismissal of the Prosecutor General should comply with all elements of benchmark 1.2: the dismissal should be based on the grounds defined in the primary law; these grounds should be clearly defined in the primary law and no vaguely formulated grounds should have been applied unless they are broken down into more specific grounds by the legislation; the main elements of the applied procedure are defined in the law; and the outcomes of different steps (if there are several steps) of the procedure were published online.</p> <p>If the dismissal of the Prosecutor General did not happen in the reporting year, the benchmark is not applicable.</p>
<p>2. Appointment, promotion and accountability of prosecutors are based on fair and clear mechanisms</p>	<p>2.1. All prosecutors (except for Deputies Prosecutor General) are selected based on competitive procedures and according to merits:</p> <ul style="list-style-type: none"> <li>A. All vacancies are advertised online;</li> <li>B. Any eligible candidate can apply;</li> <li>C. Prosecutors are selected according to merits (experience, skills, integrity).</li> </ul>	<p>Elements A and B require all vacancies (except for Deputies Prosecutor General) to be advertised online and provide any eligible candidate with the possibility to apply. The country may be found non-compliant with element B if, for example, insufficient time was provided to apply, or with element A or B if the publication was made in a way to limit its reach to possible candidates. The eligibility requirements should be defined by the national legislation and will not be checked by the monitoring.</p> <p>If the country's legislation provides for the preliminary stage of forming a pool of candidates (e.g. a reserve), then requirements set in the benchmark apply to the</p>

		<p>formation of such pools (reserves). Candidates included in the pool should be chosen for the position based on the results of the competition and not in a discretionary way – otherwise, it would deprive the competitive selection/promotion of any sense.</p> <p>“According to merits” means that decisions to shortlist (if applicable) and determine the winning candidates are made because of the merits of the candidates (experience, skills, integrity) and not other considerations, like political or personal preferences, nepotism, etc. To ensure that the decision is made according to merits, countries need to assess these qualities of candidates (namely, experience, skills, integrity). The monitoring will not check how the assessment was organised and its quality; it will check only that the candidate’s merits were assessed and results of the assessment were used to arrive to the decision to shortlist and choose the winning candidate(s).</p> <p>All elements require that the respective procedures be provided in the legislation and applied in practice. If any element does not apply to all positions or candidates (for example, a group of prosecutors was selected bypassing the general recruitment process), except for Deputies Prosecutor General, the respective element will not be met.</p> <p>Elements (A-C) are scored separately.</p>
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	<p>2.2. All prosecutors (except for Deputies Prosecutor General) are promoted based on competitive procedures and according to merits:</p> <ul style="list-style-type: none"> <li>A. Vacancies are advertised to all eligible candidates;</li> <li>B. Any eligible candidate can apply;</li> <li>C. Prosecutors are promoted according to merits (experience, skills, integrity).</li> </ul>	<p>Comments to benchmark 2.1, except for those related to the requirement of advertising all vacancies online, apply here.</p> <p>Advertised to all eligible candidates means that the information about all respective vacancies is provided and accessible to all eligible candidates.</p> <p>“Promoted” means appointed to a higher position in the same prosecutor’s office or a higher position in a higher prosecutor’s office. It does not include an appointment to an equal position in another prosecutor’s office of the same level or a position with a lower level of authority in a higher prosecutor’s office.</p> <p>Elements (A-C) are scored separately.</p>
	<p>2.3. Clear grounds and procedures for disciplinary liability and dismissal of prosecutors are stipulated:</p> <ul style="list-style-type: none"> <li>A. The law stipulates grounds for disciplinary liability and dismissal of prosecutors;</li> <li>B. Grounds for the disciplinary liability and dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” unless the legislation breaks them down into more specific grounds;</li> <li>C. The law regulates the main steps of the disciplinary procedure.</li> </ul>	<p>The benchmark looks into the quality of the law and does not evaluate its practical application.</p> <p>For element A to be met, the primary law should provide an exhaustive list of grounds for prosecutors' disciplinary liability and dismissal.</p> <p>“Clear grounds” are defined in the general definitions. Grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body. The law should expressly state all the actions or inaction that can result in liability or dismissal. The grounds should be formulated narrowly and unambiguously, avoiding such general formulations as “breach of oath”, “improper performance of duties”, or “the loss of confidence or trust” – if such grounds are</p>



		<p>used, the legislation should break them down into more specific grounds.</p> <p>Element C requires the primary law to regulate the main steps of the disciplinary procedure. “Main steps” means key elements of the disciplinary procedure, such as who can initiate disciplinary action, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision-making is organised, what is the role and rights of the prosecutor in questions. Technical procedural details may be delegated to the secondary legislation.</p> <p>Each element (A-C) is scored separately.</p>
	<p>2.4. The disciplinary investigation of allegations against prosecutors is separated from the decision-making in such cases.</p>	<p>The benchmark promotes separating the functions of disciplinary investigations and disciplinary hearings to guarantee a fair and objective evaluation and decision-making in all disciplinary cases.</p> <p>The disciplinary investigation is a process of fact-finding and collecting evidence of the alleged violation, while the disciplinary hearing should carry out the examination and evaluation of the collected evidence. Persons responsible for investigating and preparing the disciplinary case may present it to the disciplinary body but should not take part in the deliberations and sanctioning.</p> <p>The benchmark does not require that the two functions should be necessarily performed by different bodies. The benchmark will, therefore, be met if the functions are assigned to different parts/divisions within a single body. For example, a model in which the investigation is carried out by a disciplinary inspector or a disciplinary committee</p>

		of the Prosecutorial Council, while the Council makes the decision, will comply with the benchmark if those who carry out the investigation do not participate in the decision-making.
3. The budget of the public prosecution service, remuneration and performance evaluation of prosecutors guarantee their autonomy and independence	3.1. The budgetary funding allocated to the prosecution service: A. Was not less than 90% of the amount requested by the prosecution service or, if less than 90 % is considered sufficient by the prosecution service; B. Included participation of representatives of the prosecution service in consideration of its budget in the parliament or the parliament's committee responsible for the budget, if requested by the prosecution service.	<p>The state should provide sufficient budgetary funding for the public prosecution service to perform its functions independently.</p> <p>The benchmark checks whether the funding allocated in the state budget in the previous year was not less than 90% of the funding which the prosecution service has officially requested from the Government or the Parliament. If the allocated funding was less than 90% of the prosecutorial funding request, the country would still be compliant if the prosecution service itself considers the funding sufficient for performing its functions. In this case, the monitoring team will request the Prosecutorial Council or another prosecutorial governance body and the prosecution service to provide its opinion on the sufficiency of the funding.</p> <p>“Funding allocated” means funding included in the state budget and actually disbursed to the prosecution service by the end of the previous year.</p> <p>Element B requires that representatives of the prosecution service (for example, members of the prosecutorial council or another prosecutorial governance body) were provided with a possibility (invited) to participate in the deliberations on the budget of the prosecution service in the parliament or its budgetary committee if requested by the prosecution service. If the representatives of the prosecution service</p>

		<p>had the possibility to participate but chose not to, the element is met.</p> <p>Elements (A-B) are scored separately.</p>
	<p>3.2. The law protects the level of remuneration of prosecutors and limits discretion:</p> <p>A. The law stipulates guarantees protecting the level of remuneration of prosecutors (70%); OR The level of remuneration is stipulated in the law (100%);</p> <p>B. If there are additional discretionary payments, they are assigned based on clear criteria.</p>	<p>Sufficient remuneration mitigates incentives for corruption when coupled with accountability (dissuasive sanctions for violations). Low salary (below the level sufficient to sustain a decent level of life) encourages corrupt practices. Sufficient remuneration does not fully remove the risk of corruption but reduces it substantially.</p> <p>Element A has two alternative options that are scored differently depending on the level of guarantees for the sufficient level of remuneration of prosecutors. The first option, which scores 70% of the maximum score of the benchmark, represents a lower standard of protection by requiring the primary law to stipulate guarantees protecting the level of remuneration of prosecutors (for example, by linking them to certain social standards adopted in the country or prohibiting to decrease prosecutors' salaries). The second option, which scores 100% of the maximum score of the benchmark, sets a higher standard of protection by requiring the primary law to directly regulate the amount of remuneration received by prosecutors by establishing the salary rates and all increments.</p> <p>“Discretionary payments” means individual bonuses or other increments to the basic salary, which are either granted or the rate of which is determined in a discretionary manner by superior prosecutors. The benefits additional to the basic remuneration, provided to all prosecutors regularly at a fixed rate, do not belong to discretionary payments.</p>

		<p>Clear criteria are defined in the general definitions. Criteria are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body.</p> <p>Elements (A-B) are scored separately. If the country meets the first option of element A and element B the total benchmark score will be 80%. If the second option of element A and element B are met, the total score will be 100%.</p>
	<p>3.3. Performance evaluation of prosecutors is carried out by:</p> <ul style="list-style-type: none"> <li>A. Prosecutorial bodies (70%);</li> <li>B. Prosecutorial Council or another prosecutorial governance body (100%).</li> </ul>	<p>A prosecutorial governance body is explained in the general definitions. A prosecutorial body means any body within the prosecution service other than a prosecutorial governance body.</p> <p>The benchmark requires the Prosecutorial Council or another prosecutorial governance body to be responsible for conducting performance evaluation of prosecutors. The respective body should analyse and assess data on the performance of work by individual prosecutors, and depending on the system, approve a rating, score, conclusion or opinion on their performance.</p> <p>The benchmark assumes that there is a system of such a performance evaluation; if not, the country is not compliant. The monitoring team will not analyse the elements of the performance evaluation system beyond the requirements of the benchmark.</p>
<p>4. The status, composition, functions and operation of the Prosecutorial Council</p>	<p>4.1. The Prosecutorial Council and other prosecutorial governance bodies function based on the Constitution and/or law that defines their powers.</p>	<p>A prosecutorial governance body is explained in the general definitions. If the Prosecutorial Council or another body does not qualify as the prosecutorial governance body according to the definition, the</p>

guarantee the  
independence of the  
public prosecution  
service

benchmarks in Indicator 4, as well as benchmarks 1.1 (in its part referring to a prosecutorial governance body), 2.4, 2.5 and 3.3 of this Performance Area are scored as 0. If there are several bodies, only those that qualify as the prosecutorial body according to the definition will be evaluated under the benchmarks.

The Prosecutorial Council or a similar independent body of prosecutorial governance should be set up based on the primary law. The council or another body should also operate in practice.

The primary law should define the powers of such a body (bodies).

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

- A. Are elected by their peers;
- B. Represent all levels of the public prosecution service.

A prosecutorial governance body is explained in the general definitions.

When assessing compliance with element A of the benchmark, only those prosecutorial members of the council who were elected by their peers (that is by other prosecutors) representing all levels of the public prosecution service will be counted. For example, if one of the prosecutorial members of the council (e.g. Prosecutor General) is an ex officio member who was not elected by other prosecutors, then such a member will not be counted as a part of the majority of prosecutorial members.

Elements (A-B) are scored separately.

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

A prosecutorial governance body is explained in the general definitions. "With voting rights" means that lay members of the respective body should have equal voting rights with other members of the body.

	<p>4.4. The decisions of the Prosecutorial Council and other prosecutorial governance bodies:</p> <ul style="list-style-type: none"> <li>A. Are published online;</li> <li>B. Include an explanation of the reasons for taking a specific decision.</li> </ul>	<p>A prosecutorial governance body is explained in the general definitions. Online publication means that the decisions are available online for the general public to access without technical barriers.</p> <p>The benchmark allows redacting sensitive personal data from the published decisions (e.g. personal details of natural persons - third parties involved in the matter).</p> <p>Element A requires the publication of at least the operative part of the adopted decision. For element B to be met, the published decisions of the body should include an explanation of the reasons for making the decision.</p> <p>For example, to meet element A published disciplinary decisions should include the sanction applied or other decision taken as a result of the disciplinary proceedings, position of the prosecutor who was the offender, and at least in cases of dismissal and other severe cases of misconduct also his/her name. To meet element B such decisions should also describe what was the disciplinary violation, was it confirmed or not confirmed and why.</p> <p>Elements (A-B) are scored separately.</p>
	<p>4.5. The Prosecutorial Council or other prosecutorial governance bodies play an important role in the appointment of prosecutors:</p> <ul style="list-style-type: none"> <li>A. The Prosecutorial Council or another prosecutorial governance body directly appoints prosecutors. The role of the Prosecutor General (if involved at all) is limited to endorsing the Council's decision without the possibility of rejecting it (100%);</li> </ul> <p>OR</p>	<p>A prosecutorial governance body is explained in the general definitions.</p> <p>The role and level of discretion of the Prosecutor General in the appointment of inferior prosecutors should be limited to mitigate the risk of undue hierarchical influence or pressure on prosecutors' decision-making.</p>

	<p>B. The Prosecutorial Council or another prosecutorial governance body prepares a proposal on the appointment of a prosecutor that is submitted to the Prosecutor General, that may reject it only in exceptional cases on clear grounds explained in the decision (70%);</p> <p>OR</p> <p>C. The Prosecutorial Council or another prosecutorial governance body reviews all candidates for the position of a prosecutor and makes a justified recommendation to the relevant decision-making body or official (50%).</p> <p><i>Note: The country is compliant with one of the alternative elements A-C if the respective procedure applies to all prosecutors. If different procedures apply to different categories of prosecutors, the country's score is determined by the element with the lower number of points.</i></p>	<p>This benchmark includes three alternative options that are scored differently. The more limited the level of discretion of the Prosecutor General is, the higher score is attributed to the respective option. Element A represents the highest standard, as it either removes the Prosecutor General from decision-making on the appointment of prosecutors or limits his/her role to a ceremonial function of endorsing the Prosecutorial Council's decision. This element is scored 100% of the maximum score for this benchmark. Elements B and C, which represent lower standards as the level of discretion of the Prosecutor General there is less limited, are scored 70% and 50% of the maximum score for this benchmark accordingly.</p> <p>One of the elements (A-C) must apply to all prosecutors. See note to the benchmark for situations when different elements apply to different categories of prosecutors. If there is a category of prosecutors to whom neither of the benchmark's elements applies, then the benchmark will not be met.</p>
	<p>4.6. The Prosecutorial Council or other prosecutorial governance bodies play an important role in the discipline of prosecutors:</p> <p>A. The Prosecutorial Council or another prosecutorial governance body directly applies disciplinary measures or proposes disciplinary measures to the relevant decision-making official that can be rejected only in exceptional cases on clear grounds explained in the decision;</p> <p>B. If the Prosecutor General is a member of the Prosecutorial Council or other prosecutorial governance bodies dealing with disciplinary proceedings, he or she does not participate in decision-making on the discipline of individual prosecutors.</p>	<p>A prosecutorial governance body is explained in the general definitions.</p> <p>Element B gives additional points in the situation when the Prosecutor General does not participate in making decisions on the discipline of individual prosecutors while being a member of the decision-making body. The element is not applicable if the Prosecutor General does not hold membership in the respective body.</p>

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## PERFORMANCE AREA 8: SPECIALISED ANTI-CORRUPTION INSTITUTIONS

### Introduction

International treaties oblige the states to ensure existence of a body or bodies or persons specialised in combatting corruption through law enforcement. Such body or bodies, or persons shall be granted the necessary independence to carry out their functions effectively without undue interference and appropriate resources. The responsibility to investigate and prosecute corruption-related crimes can be assigned to existing institutions or persons, or stand-alone bodies can be established for this purpose.

The UN Convention against Corruption (Article 36) and Council of Europe's Criminal Law Convention on Corruption (Article 20) establish criteria for effective specialisation of anti-corruption bodies, including independence, necessary powers, resources and adequate training.

The IAP fourth round of monitoring concluded that specialisation was often nominal as anti-corruption investigators and prosecutors dealt with other types of crimes or their specialisation was not ensured at the level required by international standards. In addition, the functions were dispersed among multiple agencies with overlapping jurisdiction. The benchmarks under this Performance Area aim to address these challenges.

The specialisation of investigative or prosecutorial bodies is understood in this PA as institutional and functional and does not include specialised skills and training.

If the monitored country has multiple bodies, units, persons dealing with corruption cases, the one dealing with high-level corruption will be assessed under this PA – both for investigation and prosecution of corruption. If more than one body, unit or a group of investigators is mandated to investigate or prosecute high-level corruption, the one with primary responsibility for these types of offences will be assessed. Specialisation at all levels is not necessary, for example, lack of specialisation on petty corruption will not influence the scores, if the country has specialisation on high-level corruption. If the monitored country has a stand-alone body and a unit within another body for investigation or prosecution of corruption, the stand-alone body will be evaluated under this PA. If there is no such body, the unit or persons dealing with corruption will be evaluated.

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
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<p>1. The anti-corruption specialisation of investigators and prosecutors is ensured</p>	<p>1.1. Investigation of corruption offences is assigned in the legislation to a body, unit or a group of investigators which specialise in combatting corruption:</p> <p>A. There are investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (70%); OR B. There is a body or unit of investigators with a clearly established mandate and responsibility to investigate corruption offences as the main focus of activity (100%).</p> <p><i>Note: The main focus of activity means that the specialized investigators, body or unit predominantly and primarily deal with the investigation of corruption offences but may also investigate other related crimes, namely crimes which are close in their nature to corruption (for example, misuse of state budget) or are investigated together with corruption offence (for example, forgery in office, fraud, participation in an organized criminal group).</i></p>	<p>Elements A and B of benchmark 1.1 are alternative. If the country complies with A, it receives 70% of the score. If the country complies with B, it receives 100% of the score.</p> <p>If investigation of corruption offences is assigned in legislation to a group of investigators, the country can be found compliant with A.</p> <p>If investigation of corruption offences is assigned in legislation to a body or a unit, the country can be found compliant with B.</p> <p>Under elements A and B, in case of multiple bodies, units, persons dealing with corruption cases, the one dealing with high-level corruption will be assessed. If more than one body, unit or a group of investigators is mandated to investigate high-level corruption, the one with primary responsibility for these types of offences will be assessed. Specialisation at all levels is not necessary, for example, lack of specialisation on petty corruption will not influence the scores, if the country has specialisation on high-level corruption.</p> <p>Under element B, if the monitored country has a stand-alone body and a unit within another body for investigation of corruption, the stand-alone body will be evaluated under benchmark 1.1 B. If there is no such body, the unit or persons dealing with corruption will be evaluated.</p>
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	<p>1.2. Jurisdiction of the anti-corruption body, unit, or a group of investigators specified in 1.1, is protected by legislation and observed in practice:</p> <ul style="list-style-type: none"> <li>A. The legislation does not permit corruption cases to be removed from the specialised anti-corruption body, unit, investigator, or allows it only exceptionally, based on clear grounds established in the legislation;</li> <li>B. There were no cases of transfer of proceedings outside legally established grounds.</li> </ul>	<p>Benchmark 1.2 looks into legislative regulation and the practice for removal of cases from specialised investigators. The monitoring team will examine provided statistical data and legislation regulating removal (transfer) of cases. In element A, legislation should prescribe clear (unambiguous) grounds for transferring proceedings that ensure impartiality and autonomy from both external (outside of the agency) and internal (within the agency) pressure. For example, the rules have to set an exhaustive list of objective grounds for removal of cases, i.e. grounds that are not based on personal preferences or other undue considerations (e.g. interference of political bodies).</p> <p>Removal of cases, if it is allowed, should be exceptional, based on clear grounds established in the legislation.</p> <p>To comply with element B, there should be no cases of transfer of proceedings outside legally established grounds.</p> <p>The Monitoring team will look into specific concrete cases where proceedings were transferred to determine compliance with this benchmark. The monitoring team may ask the</p>

	<p>1.3. Prosecution of corruption offences is conducted by a body, unit or a group of prosecutors which specialise in combatting corruption:</p> <p>A. There is a body, unit or a group of prosecutors with a clearly established mandate to supervise or lead the investigation of corruption cases as the main focus of activity;</p> <p>B. There is a body, unit or a group of prosecutors with a clearly established mandate to present corruption cases in court as the main focus of activity.</p> <p><i>Note: A similar approach to the “main focus” is used as in the note to 1.1.</i></p>	<p>authorities to provide examples of such cases or analyse cases known to the public.</p> <p>Elements A and B are scored separately.</p> <p>Under elements A and B of benchmark 1.3, in case of multiple bodies, units, persons dealing with corruption cases, the one dealing with high-level corruption will be assessed. If more than one body, unit or a group of prosecutors is mandated to deal with high-level corruption, the one with primary responsibility for these types of offences will be assessed. Specialisation at all levels is not necessary, for example, lack of specialisation on petty corruption will not influence the scores, if the country has specialisation on high-level corruption.</p> <p>The mandate should be identified in a binding document, a law or bylaws.</p> <p>Please consult the list of corruption offences in the section on general definitions.</p> <p>Elements A and B are scored separately.</p>
<p>2. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials</p>	<p>2.1. A dedicated body, unit or group of specialised officials dealing with the identification, tracing and return of criminal proceeds, including from corruption (asset recovery practitioners), functions in practice.</p> <p>2.2. A dedicated body, unit or group of specialised officials dealing with the management of seized and confiscated assets in criminal cases, including corruption, functions in practice.</p> <p><i>Notes: Benchmarks 2.1 and 2.2: There is no requirement that the body, unit or a group of specialised officials deal exclusively with corruption</i></p>	<p>Under benchmark 2.1 and 2.2, “dedicated body, unit or group of specialised officials”: is an agency, a unit within the agency, or specialized staff that deals exclusively with certain function(s) and do not perform other duties.</p> <p>In particular, under benchmark 2.1, “a dedicated body, unit or group of specialised officials” should: (i) identify, (ii) trace and (iii) organise return of corruption proceeds (asset recovery</p>

proceeds. If they deal with different kinds of criminal assets, including corruption assets, – the benchmarks 2.1 and 2.2 are met, as long as the body, unit or a group of specialised officials deal exclusively with function(s) described in 2.1 and 2.2, and do not perform other duties.

function). In particular, under benchmark 2.2, “a dedicated body, unit or group of specialised officials” should organise management of seized and confiscated assets in corruption (asset management function).

The legislation may decentralise the asset recovery and asset management functions to several agencies/units/groups of officials. If each of the functions is assigned to an agency that has responsibilities beyond asset recovery (e.g. law enforcement or prosecutorial body) or asset management (e.g. a state property agency, enforcement service, law enforcement or prosecutorial body) the asset recovery or asset management functions within such agency(ies) should be assigned to a dedicated unit or group of officials.

The specialisation of staff, unit or institution should be reflected in law or secondary legislation. If the specialisation is provided by the legislation, but does not function in practice, the country would not be compliant with the benchmark.

If one of the functions mentioned in the benchmark 2.1 and 2.2 (identification, tracing, return of corruption proceeds, management of seized and confiscated assets in corruption cases) is not clearly covered by mandate of any agency, unit or specialised staff both in legislation and in practice, the country will not be compliant with the benchmark.

		<p>“Functions in practice” means there is evidence demonstrating the work of the body, unit or specialised officials, such as assets have been seized or confiscated as a result of their work, the specialised body, unit, or persons had in management assets. Such evidence can be presented as reports published by the body/unit/officials, statistics, etc.</p>
<p>3. The appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based, with their tenure in office protected by law</p>	<p>3.1. The head of the anti-corruption investigative body, unit or group of investigators, which specialises in investigating corruption, is selected through the following selection procedure in practice:</p> <ul style="list-style-type: none"> <li>A. The legislation regulates the main steps in the process;</li> <li>B. The information about the outcomes of the main steps is published online;</li> <li>C. The vacancy is advertised online;</li> <li>D. The requirement to advertise the vacancy online is stipulated in the legislation;</li> <li>E. Any eligible candidates could apply;</li> <li>F. The selection is based on an assessment of candidates’ merits (experience, skills, integrity) in legislation and in practice.</li> </ul> <p><i>Note: If the head of the specialised body, unit or group of investigators was not selected in the monitoring period, the benchmark will be considered as “not applicable”. If the selection procedure was not finalised at the time of the monitoring, it shall be evaluated in the monitoring cycle after its completion and the benchmark will be considered as “not applicable” until it is finalised.</i></p>	<p>Benchmark 3.1 looks into the appointment of the head of the specialised anti-corruption investigative body or unit. It promotes a merit-based procedure with minimised political influence over the process.</p> <p>The benchmark looks into procedure and practice of the selection of the head of the dedicated anti-corruption investigative body, unit or group of investigators. Some elements require that the respective procedure be provided in the legislation, in particular - the elements A and D. Other elements require that the respective procedure be applied in practice, in particular – the elements B, C and E. The element F of the benchmark requires that respective procedure be provided in the legislation and applied in practice.</p> <p>The country may be found non-compliant with element C and E if the publication was made in a way to limit its reach to possible candidates.</p> <p>Element E requires that any eligible candidate was provided with the possibility to apply. The country may be found non-compliant with element E if, for example, insufficient time was</p>

		<p>provided to apply. The eligibility requirements should be defined by the national legislation or and by a relevant body. The actual eligibility criteria, including their quality or scope will not be evaluated as part of the monitoring. This would mean that if the candidates which meet whatever legal or other criteria in a given country could apply – this element of the benchmark was met.</p> <p>“Based on assessment of candidate’s merit” means that decisions on shortlisting candidates and winning candidates are made because of their merit (experience, skills, integrity) and not other considerations, like political or personal preferences, nepotism, etc.</p> <p>For the element F, the monitoring team will not look into the quality of the assessment of candidates. To grant the score, the monitoring team will determine whether assessment of three criteria, namely, experience, skills, integrity - took place in practice and influenced the decision to shortlist or select a candidate.</p> <p>Elements A-F are scored separately.</p>
	<p>3.2. The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit or a group of investigators, which specialise in investigating corruption, is clear, transparent and objective:</p> <ul style="list-style-type: none"> <li>A. Grounds for dismissal are defined in the law;</li> <li>B. Grounds for dismissal are clear and do not include such grounds as “breach of oath”, “improper performance of duties”, or “loss of confidence or trust” unless the legislation breaks them down into more specific grounds;</li> <li>C. The law regulates the main steps of the procedure;</li> </ul>	<p>Benchmark 3.2. looks into the quality of the law and does not evaluate its practical application. To comply with element A, the dismissal should be based on the grounds defined in the primary law.</p> <p>To comply with element B, these grounds should be clearly defined in the legislation and no vaguely formulated grounds should be applicable</p>

	<p>D. The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online.</p>	<p>unless they are broken down into more specific grounds by the legislation.</p> <p>To comply with element C, the main elements of the applied procedure should be defined in the primary law. Technical details of the procedure may be delegated to the secondary legislation.</p> <p>To comply with element D, the outcomes of different steps, if there is more than one step in the procedure, should be published online.</p> <p>Elements A - D are scored separately.</p>
	<p>3.3. There were no cases of dismissal of the head of the anti-corruption investigative body, unit or a group of investigators outside of the procedure described in benchmark 3.2.</p> <p><i>Note: If the head of the specialised body, unit or group of investigators was not dismissed in the monitoring period, the benchmark will be considered as “not applicable”. If the dismissal procedure was not finalised at the time of the monitoring, it shall be evaluated in the monitoring cycle after its completion and the benchmark will be considered as “not applicable” until it is finalised.</i></p>	<p>Benchmark 3.3 looks into practical application of the pre-term dismissal of the head of the dedicated anti-corruption investigative body, unit or group of investigators.</p>
	<p>3.4. The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:</p> <ul style="list-style-type: none"> <li>A. The legislation regulates the main steps in the process;</li> <li>B. The information about the outcomes of the main steps is published online;</li> <li>C. The vacancy is advertised online;</li> <li>D. The requirement to advertise the vacancy online is stipulated in the legislation;</li> <li>E. Any eligible candidates could apply;</li> <li>F. The selection is based on the assessment of candidates’ merits (experience, skills, integrity).</li> </ul>	<p>Benchmark 3.4 looks into procedure and practice of the selection of the head of the dedicated anti-corruption prosecutorial body, unit or group of prosecutors. All elements require that the respective procedure be provided in the legislation and applied in practice.</p> <p>The country may be found non-compliant with element B – E if the publication was made in a way to limit its reach to possible candidates.</p>



	<p><i>Note: If the head of the specialised body, unit or group of prosecutors was not selected in the monitoring period, the benchmark will be considered as “not applicable”. If the selection procedure was not finalised at the time of the monitoring, it shall be evaluated in the monitoring cycle after its completion and the benchmark will be considered as “not applicable” until it is finalised.</i></p>	<p>Element E requires that any eligible candidate was provided with the possibility to apply. The country may be found non-compliant with element E if, for example, insufficient time was provided to apply. The eligibility requirements should be defined by the national legislation and or and by a relevant body. The actual eligibility criteria, including their quality or scope will not be evaluated as part of the monitoring. This would mean that if the candidates which meet whatever legal or other criteria in a given country could apply – this element of the benchmark was met.</p> <p>For the element F, the monitoring team will not look into the quality of the assessment of candidates. To grant the score, the monitoring team will determine whether assessment of three criteria, namely, experience, skills, integrity - took place in practice.</p> <p>Elements A-F are scored separately.</p>
<p>4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently</p>	<p>4.1. An anti-corruption investigative body, unit or a group of investigators, which specialises in investigating corruption, has in legislation and practice:</p> <ul style="list-style-type: none"> <li>A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations;</li> <li>B. Powers to access tax, customs and bank data – directly or through a court decision.</li> </ul> <p><i>Note: Powers to apply covert surveillance, intercept communications and conduct an undercover investigation can be performed by the dedicated body, unit or a group of investigators directly or through (with the help of) other bodies.</i></p>	<p>To comply with elements A and B of benchmark 4.1, the specialised anti-corruption investigative body, unit or a group of investigators need only to have the powers listed in these elements; other additional powers shall not influence the scoring. If one of the powers is missing (for example, to intercept communications or access to bank data), the element is not met.</p> <p>Relevant powers should be clearly spelled out in the legislation and they should be applied in practice. Application of these powers may be</p>

		<p>subject to prior authorisation, e.g. by the prosecutor or judge.</p> <p>Elements A and B are scored separately.</p>
	<p>4.2. Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:</p> <p>A. A number of registered criminal proceedings/opened cases of corruption offences;</p> <p>B. A number of persons whose cases were sent to court disaggregated by level and type of officials;</p> <p>C. A number of terminated investigations with grounds for termination.</p> <p><i>Note: The ground for termination means the legal ground, such as due to running out of the statute of limitations, absence of elements of the crime, etc., but not the details of the cases.</i></p>	<p>There is no requirement as to where and who publishes statistics from benchmark 4.2. It should be published by the state authority, and if it is publicly available at least annually, the benchmark will be considered met.</p> <p>“Online publication” means that the information is available online for the access by general public without technical barriers.</p> <p>Elements A-C are scored separately.</p>
<p><b>Main reference materials</b></p> <ul style="list-style-type: none"> <li>• OECD (2020), Anti-corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2016-2019, pages 320-344, <a href="http://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf">www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf</a>.</li> <li>• OECD/ACN, Istanbul Action Plan monitoring report and progress updates (<a href="https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm">https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm</a>).</li> <li>• GRECO, Fourth Evaluation Round reports (<a href="https://www.coe.int/en/web/greco/evaluations">https://www.coe.int/en/web/greco/evaluations</a>).</li> <li>• UNCAC <a href="#">Legislative Guide</a> for the Implementation of the United Nations Convention against Corruption.</li> <li>• <a href="#">Technical Guide</a> to the UNCAC.</li> <li>• Venice Commission (2010), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service.</li> <li>• OECD (2020) Thematic Study on the Independence of Prosecutors.</li> <li>• Opinion No. 14 (2019) of the CCPE: “The role of prosecutors in fighting corruption and related economic and financial crime.”</li> <li>• OECD (2013) Anti-Corruption Network for Eastern Europe and Central Asia, Specialised Anti-Corruption Institutions: Review of Models.</li> </ul>		

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## PERFORMANCE AREA 9: ENFORCEMENT OF CORRUPTION OFFENCES

### Introduction

**Enforcement of corruption offences.** The international standards require that anti-corruption measures include law enforcement through criminal sanctions. Only criminal sanctions give the necessary level of deterrence and punishment of such serious wrongdoing as corruption. Criminal law and procedures provide the most effective means to detect, investigate and prosecute corruption.

The Istanbul Anti-Corruption Action Plan, during the previous four rounds of the monitoring, conducted a detailed review of the legislation and enforcement practice of corruption offences in the IAP countries. The 2020 OECD/ACN summary report on the latest monitoring round summarized the conclusions of the monitoring concerning criminalization of corruption. The new benchmarks focus only on the enforcement to check the application of criminal sanctions for corruption offences and whether there are any obstacles to effective enforcement. “Corruption offences” mean criminal offences mentioned in Chapter III of the United Nations Convention against Corruption, as explained in the general definitions.

**Liability of legal persons.** Corruption offences are often committed for the benefit of legal persons, especially corruption with substantial proceeds. Complex governance structures and collective decision-making processes in corporate entities make it difficult to uncover and prosecute such offences. Perpetrators and instigators can hide behind the corporate veil and evade liability. Also, individual liability of company officers is not an effective deterrent of corporate wrongdoing.

As noted in the G20 High Level Principles on the Liability of Legal Persons for Corruption, ensuring that a legal person, as well as the culpable individuals, can be held liable can have an important deterrent effect, motivating and incentivizing enterprises to make compliance a priority along with investing in adequate and effective internal controls, ethics and compliance programmes or measures to prevent and detect corruption. Fighting corruption would fall short if only the natural persons involved were punished while the legal person was exempt from sanctions.

The liability of legal persons for corruption offences is a well-established international standard included in the mandatory provisions of international anti-corruption instruments: from the 1997 Second Protocol to the EU Convention on the Protection of the Financial Interests of the European Communities (Art. 3) and the OECD Anti-Bribery Convention (Art. 2), to the 1999 Council of Europe Criminal Law Convention (Art. 18) and the 2003 UNCAC (Art. 26).

The Istanbul Anti-Corruption Action Plan, during the previous four rounds of the monitoring, conducted a review of the legislation and enforcement practice on the corporate liability for corruption offences. The IAP countries still lag in establishing effective legislative provisions in this regard and, especially, in enforcing them in practice. The benchmarks, therefore, focus both on the quality of legislative provisions and enforcement practice.

**Confiscation and asset recovery.** Depriving criminals of illicit profits should be one of the main objectives of law enforcement activities against corruption, which along with sanctions must serve as a strong deterrent to corrupt behaviour. According to the World Bank, more than USD 1 trillion is paid in bribes annually, while estimates of the World Economic Forum show that USD 2.6 trillion is stolen through corruption. Different money laundering schemes are usually used by corrupt officials to hide the illegal origin of their assets, very often with finally locating those assets abroad, which makes their actual confiscation very difficult. Due to the time consuming and resource intensive nature of the asset recovery process, as well as to the lack of capacities and sometimes of true political will, many countries are struggling to achieve a resultative return of corrupt assets. This, in its turn, undermines the rule of law and public trust in government and its anti-corruption efforts. Indicator 3 of this PA is premised on the generally accepted concept of asset recovery as a complex and multi-stage process that includes asset tracing through intelligence and evidence collection, securing the assets, court or administrative procedure resulting in conviction or confiscation/compensation order, enforcing action and actual return of assets.

**High-level corruption.** According to the conclusions of the ACN Summary Report for the period of 2016-2019, high-level and complex corruption remained one of the key problems for the region with most countries showing limited efforts to address it adequately. The most common obstacles to tackle effectively high-level corruption in the region were the lack of true political will to pursue these crimes, weakness, and lack of capacities of law enforcement institutions, low levels of interagency and international co-operation. Disproportionate and lenient sanctions which courts applied in corruption cases was another area of concern. Similar concerns were expressed by other international organisations. For example, an EU Report on the continued fulfilment of visa-free requirements stressed that high-level corruption remains an issue for the covered Western Balkans and Eastern Partnership countries.<sup>1</sup>

INDICATORS	BENCHMARKS WITH ELEMENTS	GUIDE
1. Liability for corruption offences is enforced	1.1. Sanctions are routinely imposed for the following offences: A. Active bribery in the public sector; B. Passive bribery in the public sector; C. Active or passive bribery in the private sector;	<p><b>“Routinely imposed”</b> is explained in the general definitions and means that for each element (A-F) there were at least 3 cases of sanctions imposed for the respective offences in the previous year.</p> <p>The national authorities will be requested to provide statistics on the first instance convictions for each element of the benchmark. The absence of such general statistics (for example, because the national statistical recording is organised differently), however, will not be a ground for non-compliance.</p> <p>The authorities must provide at least 3 examples of specific cases of convictions for the respective offences under each element (A-F). The examples of cases are required to check that the reported convictions concern the respective offences. The examples</p>

<sup>1</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/20200710\\_com-2020-325-report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/20200710_com-2020-325-report_en.pdf), p. 24 (the report covers Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Georgia, Moldova, and Ukraine)

	<p>D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of a bribe;</p> <p>E. Bribery with an intangible and non-pecuniary undue advantage;</p> <p>F. Trading in influence.</p> <p><i>Note: Enforcement-related benchmarks of this Performance Area take into account the first instance court sentences/decisions.</i></p>	<p>should include sufficient details to ascertain the factual and legal grounds for the conviction. If such examples of cases are not provided, the monitoring will assume that the country is not compliant with the benchmark's element(s).</p> <p>The benchmarks of Indicator 1 use the offences as defined in the international conventions, first of all, the UN Convention Against Corruption. However, under this indicator, the monitoring will not check the substance of national definitions and will not analyse their compliance with the international standards, because such an analysis has already been conducted in the previous monitoring rounds of OECD/ACN Istanbul Action Plan. The monitoring team will check, however, that the reported convictions were for the respective offences as they are understood in the international standards.</p> <p>When several offences are mentioned as alternatives (for example, "active or passive bribery"), the country must provide data showing at least 3 cases of sanctions for one of the offences (for example, for either active bribery or passive bribery) or their combination (for example, one case of active bribery and two cases of passive bribery).</p> <p>For element D, the benchmark requires to show at least three cases of autonomous sanctions for offering or promising of a bribe, or for bribe solicitation or acceptance of offer/promise of a bribe in cases when there was no completed bribe giving or bribe taking. For example, if the conviction was for giving the bribe which also included the offer or promise of the bribe, it will not be accepted unless conviction for offer/promise/etc. was a separate count (episode) of the charges.</p> <p>Elements (A-F) are scored separately.</p>
	<p>1.2. Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets).</p>	<p>For the explanation of "routinely imposed" and requirements on the statistics and examples of cases see comments to benchmark 1.1.</p> <p>This benchmark requires enforcement of either criminal illicit enrichment or, alternatively, confiscation of unexplained wealth through administrative or civil proceedings. Unexplained wealth (or unjustified assets) means assets the acquisition of which cannot be explained by lawful sources of income of the public official. If the country has both the criminal offence and non-criminal confiscation, the monitoring will consider the cumulative number of cases of convictions and confiscation measures ordered (by the first instance courts) during the previous reporting year. If the country</p>

		has only illicit enrichment or non-criminal confiscation, the monitoring will consider the enforcement of the existing measure.
	1.3. There is at least one case of the started investigation of foreign bribery offence.	<p>This benchmark requires that, during the previous reporting year, the national authorities started at least one new investigation into foreign bribery offence. The same investigation may not be reported more than for one reporting period.</p> <p>The authorities must provide an example of the case with a description of factual and legal circumstances sufficient to ascertain that it concerns foreign bribery.</p> <p>“Started investigation” means that the investigation was officially registered.</p>
	<p>1.4. Sanctions are routinely imposed for the following offences:</p> <ul style="list-style-type: none"> <li>A. Money laundering with possible public sector corruption as a predicate offence;</li> <li>B. Money laundering sanctioned independently of the predicate offence.</li> </ul>	<p>For the explanation of “routinely imposed” and requirements on the statistics and examples of cases see comments to benchmark 1.1.</p> <p>Element A requires at least 3 cases of convictions for money laundering where the predicate offence was public sector corruption. For this element, it does not matter whether the person was actually convicted for the predicate offence, but the money laundering conviction should refer to the possible public sector corruption as the predicate.</p> <p>Element B requires 3 cases of stand-alone (autonomous) convictions for money laundering without prior convictions for the predicate offence. The type of the possible predicate offence does not matter.</p> <p>Elements (A-B) are scored separately.</p>
	1.5. In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held.	The benchmark checks the law and practice of dismissal of public officials who were convicted for a corruption crime. The country is compliant with the benchmark if there is a universal practice of dismissal of the convicted officials from public office regardless of whether such a dismissal is a part of the criminal sanction applied by court or an administrative or disciplinary consequence of the conviction. The universal practice, for this benchmark, exists when the legislation includes relevant requirements and there are no known cases that it has not been followed in practice.
	1.6. There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:	Countries in the IAP region provide for special defences exempting from liability perpetrators of active bribery and trading in influence offences. Such a defence arises

	<p>A. Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically);</p> <p>B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own;</p> <p>C. The special exemption is not allowed when bribery is initiated by the bribe-giver;</p> <p>D. The special exemption requires active co-operation with the investigation or prosecution;</p> <p>E. The special exemption is not possible for bribery of foreign public officials;</p> <p>F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor.</p> <p><i>Note: These safeguards can be stipulated in the legislation or official guidelines that are followed in practice.</i></p>	<p>when a person was solicited or extorted (forced under duress) to give a bribe and reported it to law enforcement officials.</p> <p>Such an exemption may be useful to facilitate detection of bribery of public officials, but it may also be abused as the previous rounds of the IAP monitoring have shown. The benchmark checks the national practice of applying this exemption and the respective safeguards.</p> <p>The safeguards mentioned in elements A-F can be stipulated in the legislation (for example, criminal code) or official guidelines. The safeguards must be followed in practice.</p> <p>The legislation or official guidelines should explicitly mention the safeguards in line with this benchmark's elements. Official guidelines may not be a legally binding document (a normative act) but should be issued by a state authority (for example, Prosecutor General) that has a mandate to issue such guidelines. Official guidelines could mean court case-law that supports in practice relevant interpretation of the legislative provisions. It could be an authoritative clarification provided to courts by the Supreme Court.</p> <p>Elements (A-F) are scored separately.</p>
	<p>1.7. No case of corruption offence by a public official is terminated because of:</p> <p>A. The expiration of the statute of limitations;</p>	<p>The statute of limitations period and time limit for the investigation when they are not sufficiently long or are not flexible enough may hinder the effective enforcement of corruption offences.</p> <p>The benchmark does not analyse respective provisions as such but checks the result of their application. If there was at least one case during the previous year when the</p>



	<p>B. The expiration of time limits for investigation or prosecution.</p>	<p>criminal case of corruption by a public official was terminated because of the expiration of the statute of limitations or time limits for investigation or prosecution, the benchmark is not met.</p>
	<p>1.8. Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:</p> <ul style="list-style-type: none"> <li>A. Number of cases opened;</li> <li>B. Number of cases sent to the court;</li> <li>C. Number of cases ended with a sentence (persons convicted);</li> <li>D. Types of punishments applied;</li> <li>E. Confiscation measures applied;</li> <li>F. Types and levels of officials sanctioned.</li> </ul>	<p>The benchmark requires annual online publication of enforcement statistics for each corruption offence according to categories of information mentioned in the benchmark's elements.</p> <p>The benchmark does not require that the said statistics is published centrally by one authority. Although central collection and publication are preferable, the country will be compliant if individual authorities publish relevant information. However, in this case there should be no gaps – if one of the authorities does not publish online annually information required in one of the elements, the element is not met.</p> <p>Elements (A-F) are scored separately.</p>
	<p>1.9. Enforcement statistics on corruption offences is collected on the central level.</p>	<p>Centralised collection and analysis of enforcement statistics is important to design and implement relevant policy interventions against corruption. When individual authorities collect and manage criminal justice statistics (including those on corruption offences) as is the case in most of the IAP countries, often there is a lack of coherence and consistency of data between various stages of criminal proceedings. Decentralised statistics does not allow seeing a full picture, identifying enforcement gaps, and planning policy interventions accordingly. Ideally, there should not be data gaps between various stages of enforcement: from opening a case to sanctions. This benchmark gives points to countries that centralised the collection of the enforcement statistics on corruption offences.</p> <p>The enforcement statistics collected on the central level should at least include data mentioned in elements A-F of benchmark 1.8.</p>
<p>2. The liability of legal persons for corruption offences is provided in the law and enforced</p>	<p>2.1. The liability of legal persons for corruption offences is established in the law.</p> <p><i>Note: The liability of legal persons</i></p>	<p>The benchmark sets the basic requirement of having corporate liability for corruption offences established in the primary law. The benchmark does not require any specific type of liability and does not assess quality of the relevant provisions (other benchmarks cover these aspects). If a non-criminal liability is chosen, it must apply to criminal</p>

	<p><i>should be established at least for active bribery in the public and private sector, trafficking in influence (if criminalized in the country), and money laundering.</i></p>	<p>corruption offences nonetheless, that is the liability must be triggered when the person commits a criminal corruption offence.</p> <p>To comply with the benchmark, the country should show provisions of the primary law that establish liability and sanctions applicable to legal entities for corruption offences.</p> <p>The corporate liability should be established at least for active bribery in the public and private sectors, trafficking in influence (if trafficking in influence is criminalized in the country), and money laundering. If one of these offences is not covered, the benchmark is not met. These three offences are the required minimum because among the corruption offences they are the most relevant ones for the corporate liability. See also Article 18 of the Council of Europe’s Criminal Law Convention on Corruption (“Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person[...]).</p> <p>Non-compliance with this benchmark does not affect other benchmarks of this Indicator, if the liability of legal persons is established for at least one corruption offence.</p>
	<p>2.2. The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted.</p>	<p>One of the main problems in establishing an effective corporate liability is ensuring its autonomous nature. First, the corporate liability should not be dependent on the prosecution or conviction of the natural person who committed the criminal act. Second, there should be a possibility of separate proceedings regarding the natural person (who committed the underlying offence) and the legal entity.</p> <p>The country will be compliant with the benchmark if its law ensures the autonomous nature of the corporate liability by clearly stipulating it and including procedural rules for conducting separate proceedings. The country will not be compliant, in particular, if rules of procedure for holding the company liable link the proceedings or sanctions against the company to the detection or proceedings against the individual offender.</p>
	<p>2.3. The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the</p>	<p>Legal persons should be subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions. The dissuasiveness of sanctions often depends on the amount of monetary measures imposed on the legal person, which may include a fine and the confiscation of the profit or proceeds obtained as a result of</p>

	<p>amount of the undue benefit paid as a bribe or received as proceeds.</p>	<p>the offence. Monetary sanctions should be sufficiently severe to have an impact on large corporations.</p> <p>Sanctions are “proportionate” if they take into account and correspond to the nature and gravity of the offence. Sanctions are “dissuasive” if they have sufficient deterrent effect, that is if the cost of bearing the sanction is higher than the potential benefit derived from the offence. To be dissuasive sanctions also must be effective, that is enforceable and properly addressing the offence in question.</p> <p>The benchmark requires, in particular, that monetary fines are linked and proportionate to the amount of the undue benefit. It can be implemented by having a correlation between the amount of fine and the amount of undue benefit or by formulating the monetary sanction as a multiplier of the undue benefit. “Undue benefit” means either the amount of benefit (bribe) provided by the company’s employee or other agent, or the amount of benefit (proceeds) that was obtained or could have been obtained by the company as a result of the corrupt deal.</p> <p>Monitoring experts will establish whether specific monetary sanctions applicable to legal entities for corruption offences in the country’s context are dissuasive and proportionate based on evidence, including such sources of information: answers to the monitoring questionnaire from the government and non-governmental stakeholders, existing surveys and studies, feedback of stakeholders received during the on-site visit, etc.</p> <p>“Corporate offences” in this benchmark means corruption offences committed in the interests of the legal entity and for which the national law stipulates corporate liability.</p>
	<p>2.4. The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license).</p>	<p>In addition to monetary sanctions, a good practice of countries is to use various restrictions of the company’s rights as a sanction or additional administrative consequence of the sanction. The benchmark requires that such sanctions or measures (regardless of their legal nature) are applicable to legal entities for corruption offences.</p> <p>Examples of such sanctions (measures) include:</p> <ul style="list-style-type: none"> <li>- A prohibition on obtaining permits, licenses, concessions, authorisations or any other right prescribed by a special law.</li> <li>- A prohibition on participating in public bidding procedures or on the awarding of public procurement agreements and agreements for public-private partnerships.</li> </ul>

- A prohibition on establishing new legal entities.
- A prohibition on using subsidies or receiving state guaranteed loans.
- The revocation of a permit, license, concession, authorisation, or other rights regulated by a special law.
- The temporary or permanent prohibition on conducting certain activity.
- The obligation to develop and implement a programme of measures to prevent further offences.
- The closing of a legal person's branch office.
- Placing the legal entity under judicial supervision.
- The prohibition of transactions with the beneficiaries of the national or local budget.
- Requiring the company to do community service.

The benchmark encourages the application of a broad range of non-monetary sanctions or measures, but for technical compliance it would be sufficient to have two or more such measures or sanctions.

The benchmark looks only into the applicable primary law in force and does not evaluate enforcement practice.

2.5. The legislation or official guidelines allow due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions considering the case circumstances.

Establishing an exemption from liability when the company implemented a robust compliance system promotes implementation in companies of adequate internal control, ethics and compliance programmes or measures. Due diligence defence allows companies to avoid sanctions when the offence was committed by the company's employee despite the systemic measures taken by the company's leadership to prevent such acts.

The benchmark requires that the law provides for a defence which the company can use to argue against imposition of sanctions on it, to mitigate sanctions, or defer them. Having at least one element (exemption, mitigation, or deferment) is sufficient for compliance.

		<p>The defence can be formulated in different ways (for example, that the company had sufficient compliance rules and mechanisms and that it did everything in its power to prevent the crime or that the company had an effective internal controls and compliance programme) but its application should not be automatic. The court or another sanctioning body should review each specific case and decide whether conditions set for application of the defence have been satisfied.</p> <p>Another measure to promote robust internal controls and compliance programmes in companies is to allow the court to defer (suspend) the application of corporate sanctions and impose on the company an obligation to implement certain measures to prevent future violations. If the company complies with the terms of deferment (suspension), it would be released from the sanction or its part. Such a measure underlines the corrective nature of the corporate liability that aims to improve business practices.</p> <p>The law may stipulate different measures that can be applied by court while deferring (suspending) the main sanction. For example:</p> <ul style="list-style-type: none"> <li>- To develop and implement a programme of effective, necessary and reasonable internal controls and other measures with the aim to prevent perpetration of the criminal offence.</li> <li>- To make periodic reports on its business operations and deliver them to the authority competent for supervision.</li> <li>- To refrain from business activities which might provide an opportunity or incentive for reoffending.</li> <li>- To eliminate or mitigate the damage caused by the criminal offence.</li> </ul>
	<p>2.6. The following sanctions (measures) are routinely applied to legal persons for corruption offences:</p> <ol style="list-style-type: none"> <li>A. Monetary sanctions;</li> <li>B. Confiscation of corruption proceeds;</li> <li>C. Non-monetary sanctions (for example, prohibition of certain activities).</li> </ol>	<p>This benchmark checks the practice of enforcement of legislative provisions described in the previous benchmarks.</p> <p>“Routinely applied” is explained in the general definitions and means that in the previous year there were at least 3 cases of sanctions (measures) imposed under each of the benchmark’s elements. “Sanctions (measures) imposed” means the decision of the first instance court or another final decision-making body.</p> <p>“Confiscation of corruption proceeds” means confiscation applied to the legal person, not the natural person who perpetrated the offence.</p>

		<p>The national authorities will be requested to provide statistics on the sanctions (measures) applied to legal persons for corruption offences in the previous year. The absence of such general statistics (for example, because the national statistical recording is organised differently), however, will not be a ground for non-compliance.</p> <p>The authorities must provide at least 3 examples of specific cases under each element of the benchmark. The examples should include sufficient details to ascertain the factual and legal grounds for applying sanctions (measures). If such examples of cases are not provided, the monitoring will assume that the country is not compliant with the benchmark's element(s).</p> <p>Elements (A-C) are scored separately.</p>
<p>3. Confiscation measures are enforced in corruption cases</p>	<p>3.1. Confiscation is routinely applied regarding:</p> <ul style="list-style-type: none"> <li>A. Instrumentalities of corruption offences;</li> <li>B. Proceeds of corruption offences.</li> </ul>	<p><b>"Routinely applied"</b> is explained in the general definitions and means that in the previous year there were at least 3 cases of confiscation of instrumentalities and proceeds of corruption offences ordered by the first instance courts. Within these 3 cases, there should be at least one case of each confiscation object, that is at least one case of confiscation of instrumentalities and one case of confiscation of corruption proceeds.</p> <p>The national authorities will be requested to provide statistics on the confiscation orders for corruption offences in the previous year. The absence of such general statistics (for example, because the national statistical recording is organised differently), however, will not be a ground for non-compliance.</p> <p>The authorities must provide at least 3 examples of specific cases of confiscation of instrumentalities and proceeds of corruption offences. The examples should include sufficient details to ascertain the factual and legal grounds for the confiscation and whether it concerned instrumentalities or proceeds of corruption offences. If such examples of cases are not provided, the monitoring will assume that the country is not compliant with the benchmark's element(s).</p> <p><b>"Proceeds"</b> means any economic advantage, derived from or obtained, directly or indirectly, through the commission of a criminal offence, including any savings by means of reduced expenditure derived from the crime. It may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any</p>

		valuable benefits. <b>"Instrumentalities"</b> means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence.
	3.2. Confiscation orders in at least 50% of corruption cases are fully executed.	The benchmark requires that at least 50% of confiscation orders issued in the previous year were fully executed. "Fully executed" means that a confiscation order in a specific case was executed 100%.
	<p>3.3. The following types of confiscation measures were applied at least once in corruption cases:</p> <ul style="list-style-type: none"> <li>A. Confiscation of derivative (indirect) proceeds of corruption;</li> <li>B. Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties;</li> <li>C. Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation);</li> <li>D. Confiscation of mixed proceeds of corruption offences and profits therefrom.</li> </ul>	<p>The benchmark requires that for each element (A-D) there was at least one case when the respective confiscation measure was applied by the first instance court's decision during the previous year. Such measures should be applied in corruption cases.</p> <p>The national authorities will be requested to provide statistics on the confiscation orders for each benchmark's element in the previous year. The absence of such general statistics (for example, because the national statistical recording is organised differently), however, will not be a ground for non-compliance.</p> <p>The authorities must provide at least one example of a specific case of confiscation in corruption offences under each benchmark's element. The examples should include sufficient details to ascertain the factual and legal grounds for the confiscation and whether it complied with the benchmark's element. If such examples of cases are not provided, the monitoring will assume that the country is not compliant with the benchmark's element(s).</p> <p><b>"Derivative (indirect) proceeds"</b> mean any economic advantage received from reinvestment, transformation, or any other kind of exploiting of direct proceeds or other benefits obtained as the result of corruption offences. Derivative (indirect) proceeds, among other things, include income or other benefits derived from proceeds of corruption offence, from property into which such proceeds of offence have been transformed or converted or from property with which such proceeds of offence have been intermingled.</p> <p><b>"Instrumentalities and proceeds of corruption offences transferred to informed third parties"</b> mean instrumentalities or proceeds of corruption offences, including derivative (indirect) proceeds, or other property the value of which corresponds to such instrumentalities and proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties (both legal and natural), or which were acquired by third parties from a suspected or accused person, at least if those third</p>

parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.

**“Value-based confiscation”** means confiscation of the amount of money or other property equivalent to the value of the proceeds or instrumentalities of the crime that could not be confiscated for any reason.

**“Mixed proceeds”** mean proceeds of corruption offences, which have been intermingled with property acquired from legitimate sources. **“Profits therefrom”** means profits obtained from mixed proceeds of corruption offences. The benchmark’s element looks into the cases where mixed proceeds or profits from such proceeds were confiscated; it does not require that the same case concerned confiscation of both types at the same time (mixed proceeds and profits from such proceeds).

Elements (A-D) are scored separately.

3.4. The following types of confiscation measures were applied at least once in corruption cases:

- A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences;
- B. Extended confiscation in criminal cases.

See comments to benchmark 3.3. on “applied at least once” and required materials to show compliance.

**“Non-conviction based confiscation”** means confiscation applied in cases, when the conviction for corruption crimes is not possible because of the death of offender or other circumstances that prevent the criminal prosecution or conviction. Non-conviction based confiscation in the benchmark also means civil or other non-criminal confiscation of instrumentalities and proceeds of corruption offences without prior conviction or prosecution.

**“Extended confiscation”** means criminal confiscation of the assets of the convicted person and informed third parties beyond the proceeds and instrumentalities of the corruption offence, provided that the value of such assets does not correspond to their lawful income.

If the country has non-criminal confiscation of unexplained wealth, it will be assessed under benchmark 1.2. of this Performance Area.

Elements (A-B) are scored separately.



	<p>3.5. Measures are taken to ensure the return of corruption proceeds:</p> <p>A. The return of corruption proceeds from abroad happened at least once;</p> <p>B. The requests to confiscate corruption proceeds are routinely sent abroad.</p>	<p>See comments to benchmark 3.3. for the explanation of required materials to show compliance under both elements of this benchmark.</p> <p><b>“Happened at least once”</b> means there was at least one case when corruption proceeds were returned to the monitored country during the previous year. Such a return must actually happen and be executed (not just ordered).</p> <p><b>“Routinely sent abroad”</b> means that there were at least 3 cases when the national authorities sent abroad requests to confiscate corruption proceeds during the previous year regardless of the outcomes of such requests.</p> <p>Elements (A-B) are scored separately.</p>
<p>4. High-level corruption is actively detected and prosecuted</p>	<p>4.1. At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release.</p> <p><i>Note: Only aggravated bribery offences punishable with imprisonment are taken into account.</i></p> <p>4.2. Immunity of high-level officials from criminal investigation or prosecution of corruption offences:</p> <p>A. Is lifted without undue delay;</p>	<p>The term “high-level corruption” is explained in the general definitions.</p> <p>The benchmark looks into national practice of dissuasive sanctions for high-level corruption. The previous monitoring rounds found that strict criminal sanctions existing in the law often are not applied in practice because courts release offenders conditionally or on other grounds without serving real terms of imprisonment.</p> <p>The country must provide statistics showing that out of all criminal sanctions (punishments) applied for high-level corruption in cases of aggravated bribery offences punishable with imprisonment during the previous year, at least 50% provided for imprisonment without any type of release from serving the punishment or release from liability. If the respective data is not available, the monitoring will assume that the country is not compliant with the benchmark.</p> <p>The first instance court sentences will be taken into account. The 50% will be calculated from the total number of convictions for high-level corruption in cases of aggravated bribery offences punishable with imprisonment. The country is not required to do it, but it may take into account in the calculation sentences according to the appeal decisions if it helps it to reach 50% benchmark (that is when the appeal court decision amends the sanction and elevates it to the unconditional imprisonment).</p> <p>The benchmark looks into whether immunity from prosecution or other procedural immunities (limitations on the right to arrest or detain, search, apply covert measures, etc.) impede the effective investigation and prosecution of corruption crimes committed by high-level officials. If there was at least one case of not complying with the</p>

	<p>B. Is lifted based on clear criteria;  C. Is lifted using procedures regulated in detail in the legislation;  D. Does not impede the investigation and prosecution of corruption offences in any other way.</p>	<p>benchmark's element during the previous year (for example, immunity was lifted with a delay or lifted not using the procedures regulated in the legislation), then the respective element is not met.</p> <p>The term "high-level officials" is explained in the general definitions.</p> <p>"Clear criteria" mean the criteria that are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body.</p> <p>The monitoring team will establish the compliance with the benchmark based on the available evidence describing the legislation and its application in practice, including such sources of information: answers to the monitoring questionnaire from the government and non-governmental stakeholders, existing surveys and studies, feedback of stakeholders received during the on-site visit, etc.</p> <p>Elements (A-D) are scored separately.</p>
	<p>4.3. No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%).</p> <p><i>Note 1: The monitoring team will provide to the Government the list of public allegations it has uncovered (if any), if such allegations were made during the calendar year preceding the year of the monitoring. The Government provides to the monitoring team detailed information on the initial review and investigation of each such case, including explanation of reasons to terminate or not to pursue the investigation. The Government also provides links to the publication of</i></p>	<p>The term "high-level corruption" is explained in the general definitions.</p> <p>The term "public allegation" is explained in the note to the benchmark.</p> <p>"Reviewed" means analysed the initial allegation that was reported to the law enforcement agency or which the agency uncovered on its own.</p> <p>"Explained to the public" means that the government explained to the public the reasons why the authorities decided not to open or to discontinue an investigation.</p> <p>If there was at least one public allegation during the previous year that was not reviewed or investigated or concerning which the authorities did not explain to the public the decision not to open or pursue the investigation, the benchmark is not met.</p> <p>The benchmark comprises two elements that are equal in their weight in the total score (each has 50% of the benchmark" score): a) No public allegation of high-level corruption was left not reviewed or investigated; b) Decisions not to open or to discontinue an investigation were taken and explained to the public. If there was at least one allegation that was reviewed but not publicly explained, the score will be 50% of the total. If there was an allegation that was reviewed and explained to the public, the score will be 100%.</p>

*information on the outcomes of such review or investigation for each case. The said publication must happen before the submission of the country's replies to the monitoring questionnaire. The publication may exclude information that is harmful to the investigation of other cases.*

*Note 2: Public allegations mean allegations that are available in the public domain and are disseminated by the reputable local or international mass media or sourced to a reputable local or international organization. The allegation should include verifiable statements of fact about specific persons and alleged violations. The monitoring team decides whether the mass media outlet or organization is considered reputable based on the feedback of the non-governmental and governmental stakeholders and including such factors as the period of operation, whether frequently cited by other stakeholders or mass media, a regular online publication of information about the organization's activity in the anti-corruption area, etc.*

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