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

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

OECD

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Foreword

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

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

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

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

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

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

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

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

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Acronyms

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

Methodology

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

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

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

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

Table 1. Performance level

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

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

Executive summary

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

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

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

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

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

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

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

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

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

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

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

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

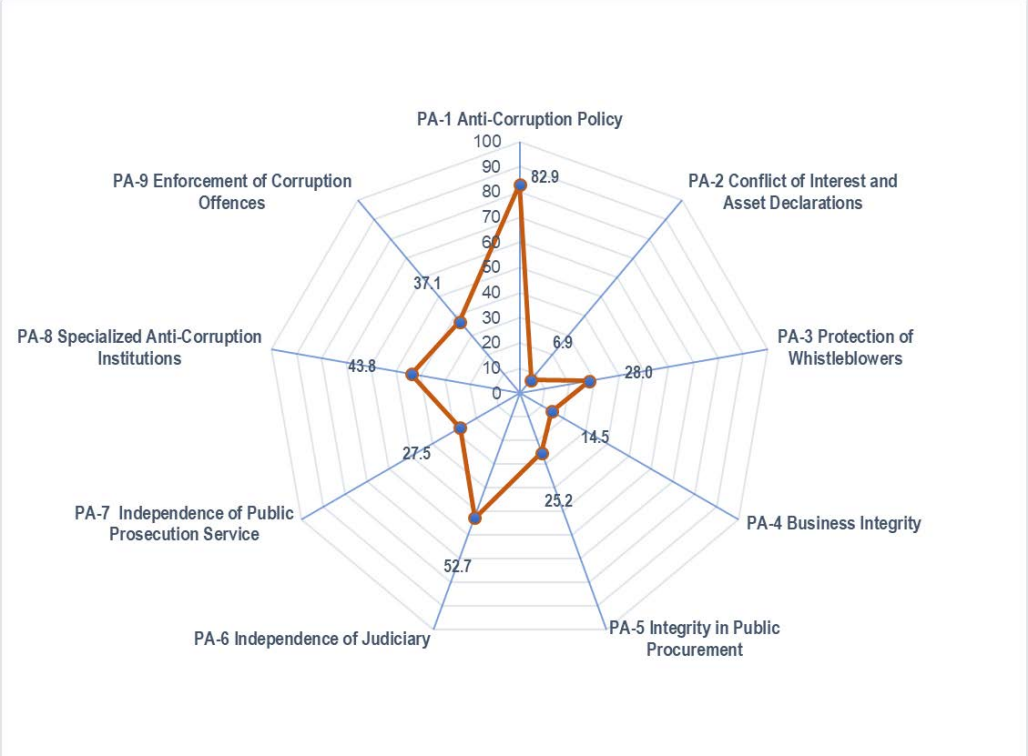
Enforcement of corruption offences. Criminal liability for corruption is enforced in Azerbaijan, but more efforts should be focused on targeting high-level public officials. The offence of illicit enrichment has not been criminalised, and there are no procedures for the confiscation of unexplained wealth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

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

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

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

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



1 Anti-corruption policy

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

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

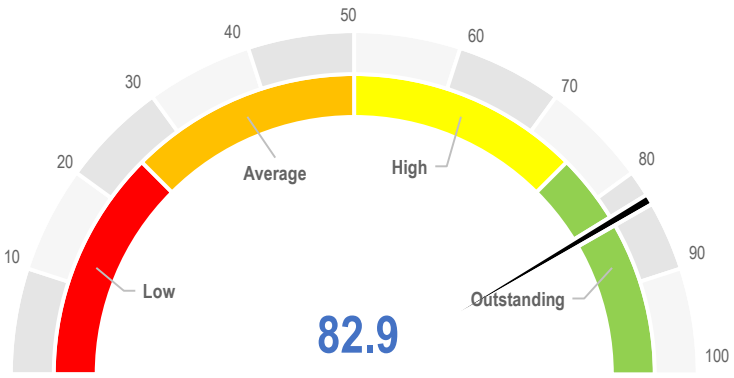
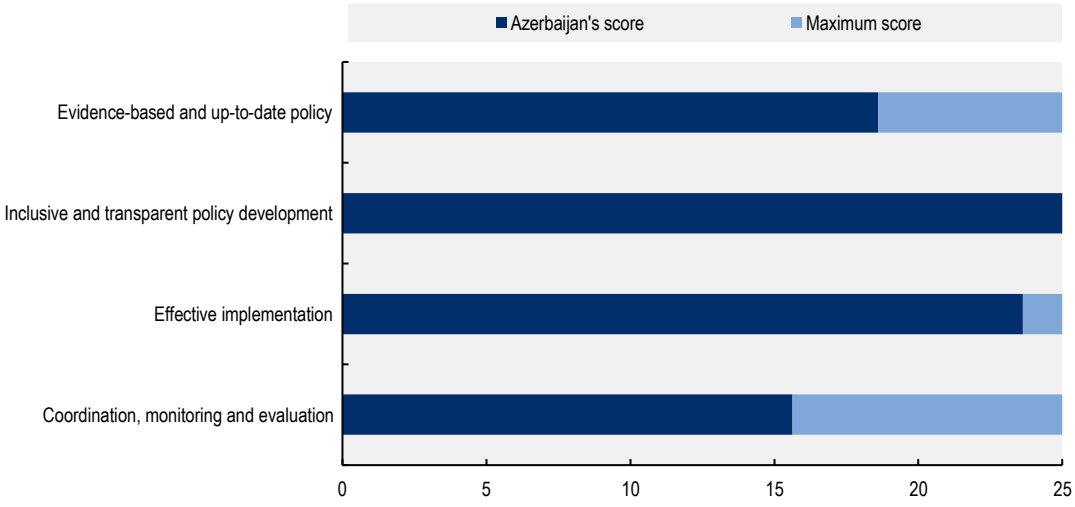


Figure 1.2. Performance level for Anti-Corruption Policy by indicators



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

Background

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

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

Assessment of compliance

Benchmark 1.1.1.

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

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

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

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

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

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

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

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

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

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

Benchmark 1.1.2.

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

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

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

Benchmark 1.1.3.

Policy documents include:

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

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

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

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

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

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

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

Assessment of compliance

Benchmark 1.2.1.

The following is published online:

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

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

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

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

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

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

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

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

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

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

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

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

Benchmark 1.3.1.

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

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

Benchmark 1.3.2.

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

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

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

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

Background

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

Assessment of compliance

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

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

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

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

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

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

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

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

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

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

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

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

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

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

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

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

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

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

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

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

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

Benchmark 1.4.4.

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

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

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

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

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

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

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

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

Assessment of non-governmental stakeholders

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

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

2 Conflict of interest and asset declarations

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

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

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

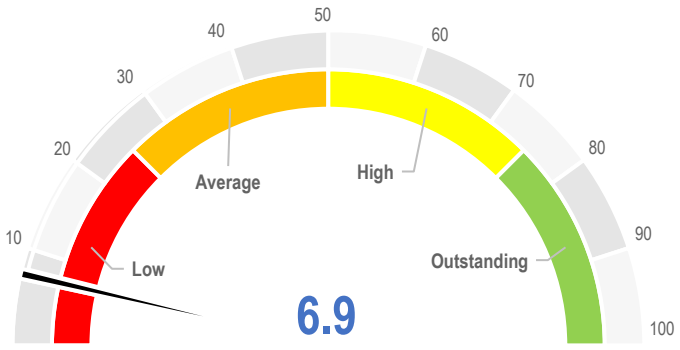
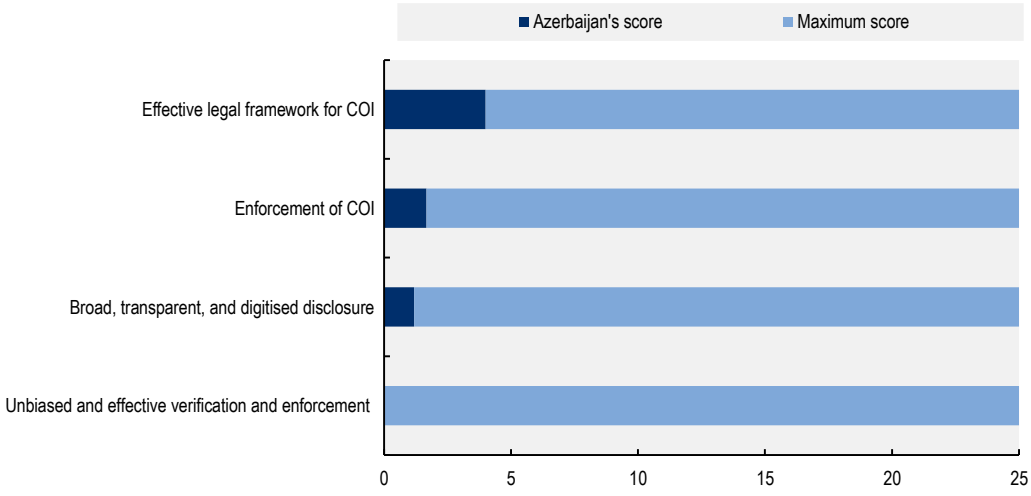


Figure 2.2. Performance level for Conflict of Interest and Asset Declaration by indicators



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

Background

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

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

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

Assessment of compliance

Benchmark 2.1.1.

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

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

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

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

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

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

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

Benchmark 2.1.2.

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

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

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

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

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

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

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

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

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

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

Benchmark 2.1.3.

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

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

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

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

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

Benchmark 2.1.4.

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

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

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

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

Benchmark 2.1.5.

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

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

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

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

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

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

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

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

Indicator 2.2. Regulations on conflict of interest are properly enforced

Background

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

Assessment of compliance

Benchmark 2.2.1.

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

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

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

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

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

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

Benchmark 2.2.2.

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

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

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

Benchmark 2.2.3.

The following measures are routinely applied:

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

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

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

Assessment of compliance

Benchmark 2.3.1.

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

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

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

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

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

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

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

Benchmark 2.3.2.

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

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

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

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

Benchmark 2.3.3.

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

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

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

Benchmark 2.3.4.

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

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

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

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	X

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

Benchmark 2.3.6.

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

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

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

Benchmark 2.3.7.

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

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

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

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

Background

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

Assessment of compliance

Benchmark 2.4.1.

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

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

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

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

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

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

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

Benchmark 2.4.2.

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

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

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

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

Benchmark 2.4.3.

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

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

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

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

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

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

Benchmark 2.4.5.

The following measures are routinely applied:

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

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

Benchmark 2.4.6.

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

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

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

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

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

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

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

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

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

Assessment of non-governmental stakeholders

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

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

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

3 Protection of whistleblowers

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

Figure 3.1. Performance level for Protection of Whistleblowers is average

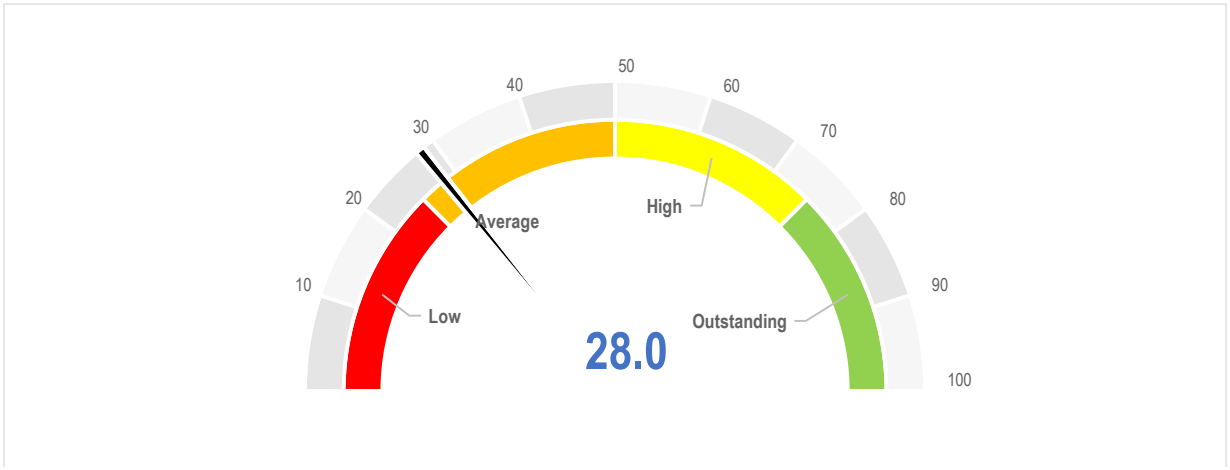
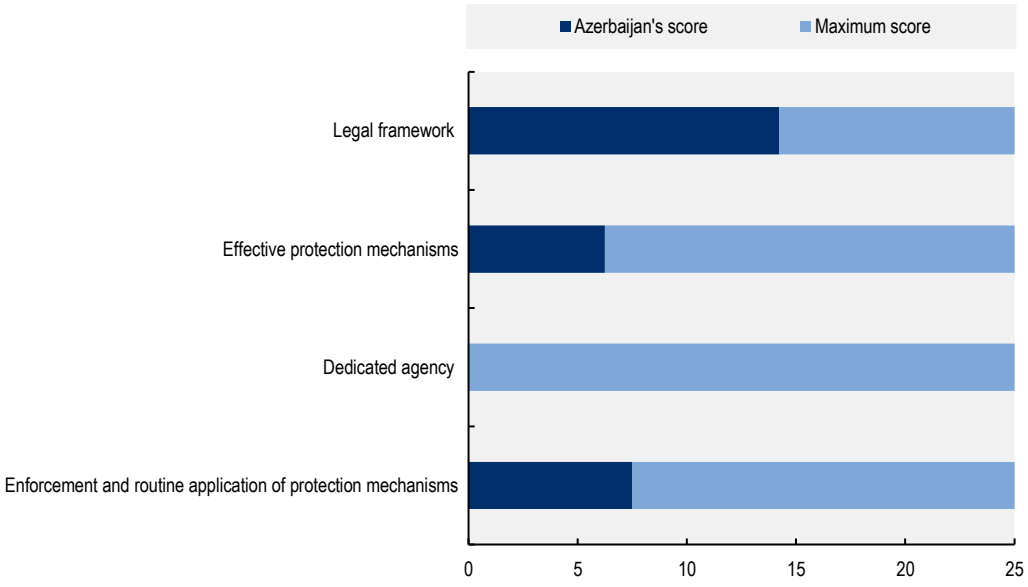


Figure 3.2. Performance level for Protection of Whistleblowers by indicators



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

Background

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

Assessment of compliance

Benchmark 3.1.1.

The law guarantees the protection of whistleblowers:

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

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

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

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

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

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

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

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

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

Benchmark 3.1.2.

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

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

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

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

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

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

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

Benchmark 3.1.3.

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

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

Benchmark 3.1.4.

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

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

Benchmark 3.1.5.

The law provides for the following key whistleblower protection measures:

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

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

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

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

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

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

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

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

Benchmark 3.1.6.

The law provides for the following additional whistleblower protection measures:

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

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

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

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

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

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

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

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

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

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

Assessment of compliance

Benchmark 3.2.1.

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

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

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

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

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

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

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

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

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

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

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

Benchmark 3.2.2.

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

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

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

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

Benchmark 3.2.3.

Anonymous whistleblower reports:

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

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

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

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

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

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

Background

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

Assessment of compliance

Benchmark 3.3.1.

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

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

Benchmark 3.3.2.

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

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

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

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

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

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

Benchmark 3.3.3.

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

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

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

Benchmark 3.3.4.

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

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

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

Assessment of compliance

Benchmark 3.4.1.

	Compliance
Complaints of retaliation against whistleblowers are routinely investigated	X

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

Benchmark 3.4.2.

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

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

Benchmark 3.4.3.

The following protections are routinely provided to whistleblowers:

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

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

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

Benchmark 3.4.4.

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

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

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

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

Assessment of non-governmental stakeholders

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

4 Business integrity

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

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

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

Figure 4.1. Performance level for Business Integrity is low

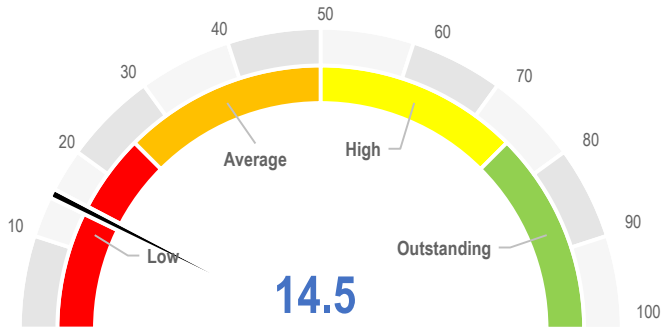
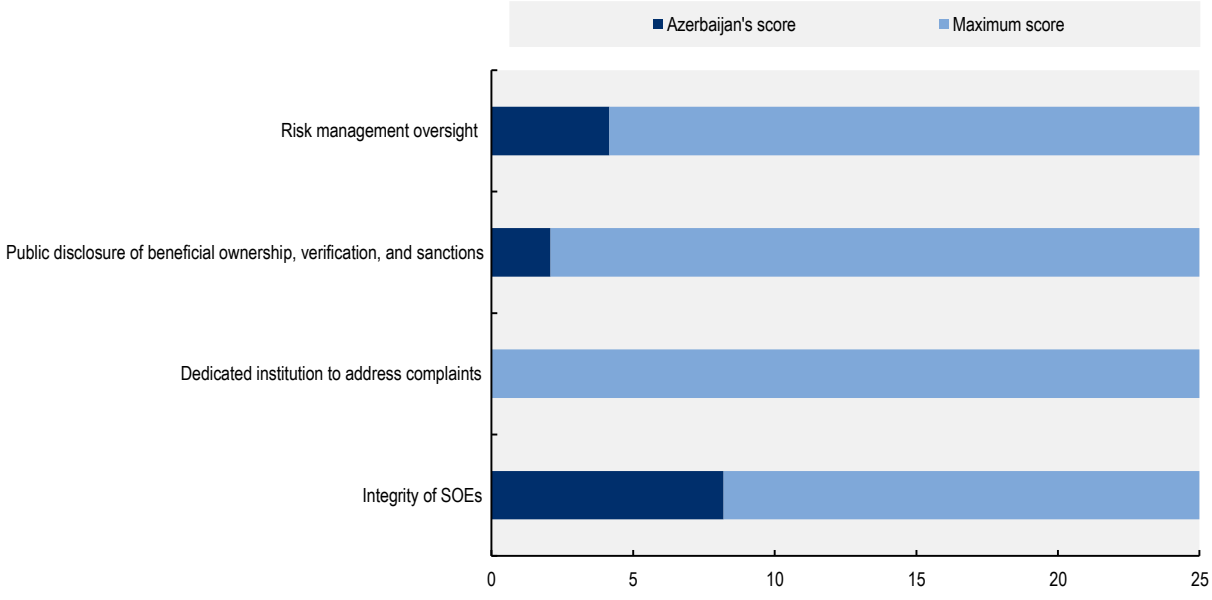


Figure 4.2. Performance level for Business Integrity by indicators



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

Background

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

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

Assessment of compliance

Benchmark 4.1.1.

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

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

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

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

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

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

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

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

Benchmark 4.1.2.

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

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

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

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

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

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

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

Assessment of compliance

Benchmark 4.2.1.

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

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

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

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

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

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

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

Benchmark 4.2.2.

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

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

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

Benchmark 4.2.3.

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

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

Benchmark 4.2.4.

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

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

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

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

Background

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

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

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

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

Assessment of compliance

Benchmark 4.3.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 4.3.2.

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

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

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

Assessment of compliance

Benchmark 4.4.1.

Supervisory boards in the five largest SOEs:

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

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

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

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

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

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

Benchmark 4.4.2.

CEOs in the five largest SOEs:

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

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

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

Benchmark 4.4.3.

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

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

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

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

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

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

Benchmark 4.4.4.

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

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

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

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

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

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

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

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

Benchmark 4.4.5.

The five largest SOEs disclose via their websites:

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

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

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

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

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

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

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

Box 4.1. Good practice in business integrity field in Azerbaijan

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

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

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

5 Integrity in public procurement

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

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

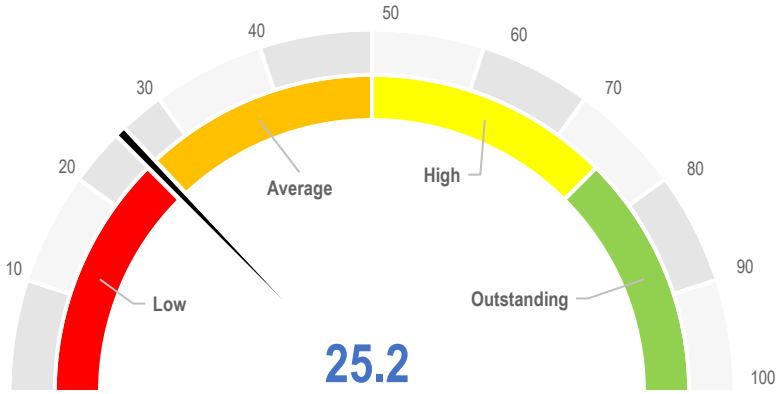
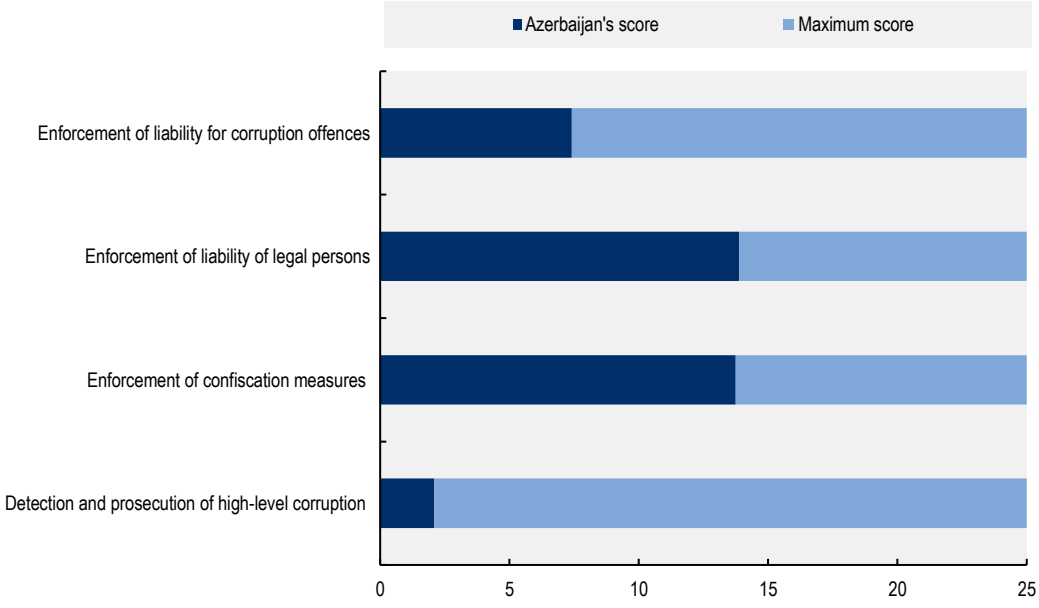


Figure 5.2. Performance level for Integrity in Public Procurement by indicators



Indicator 5.1. The public procurement system is comprehensive

Background

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

Assessment of compliance

Benchmark 5.1.1.

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

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

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

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

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

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

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

Benchmark 5.1.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 5.1.3.

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

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

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

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

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

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

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

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

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

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

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

Indicator 5.2. The public procurement system is competitive

Assessment of compliance

Benchmark 5.2.1.

Direct (single-source) contracting represents:

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

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

Benchmark 5.2.2.

The average number of proposals per call for tender is:

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

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

Benchmark 5.2.3.

The threshold value for goods contracts:

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

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

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

Assessment of compliance

Benchmark 5.3.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 5.3.2.

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

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

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

Benchmark 5.3.3.

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

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

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

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

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

Benchmark 5.3.4.

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

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

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

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

Indicator 5.4. Public procurement is transparent

Background

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

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

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

Assessment of compliance

Benchmark 5.4.1.

An electronic procurement system, including all procurement methods:

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

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

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

Benchmark 5.4.2.

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

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

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

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

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

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

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

Benchmark 5.4.3.

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

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

All elements under this benchmark are not compliant.

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

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

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

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

Information on contract implementation is not publicly available online.

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

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

Benchmark 5.4.4.

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

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

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

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

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

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

Assessment of non-governmental stakeholders

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

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

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

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

6 Independence of judiciary

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

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

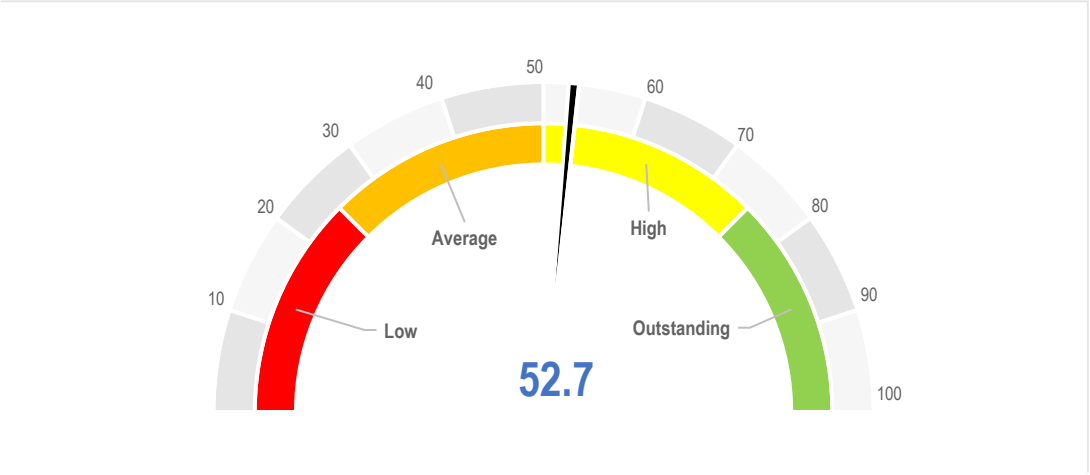
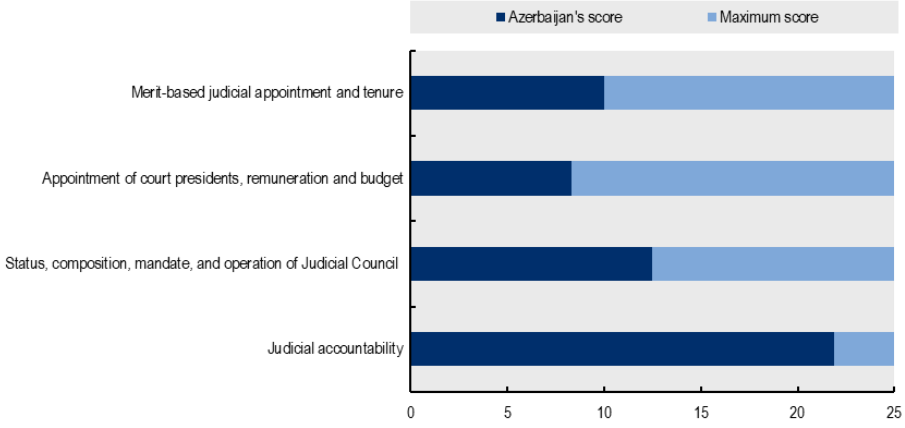


Figure 6.2. Performance level for Independence of Judiciary by indicators



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

Assessment of compliance

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

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

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 6.1.2.

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

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

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

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

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

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

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

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

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

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

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

Benchmark 6.1.3.

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

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

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

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

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

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

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

Benchmark 6.1.4.

Judges are selected:

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

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

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

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

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

14.1.2 three judges of the Court of Appeal;

14.1.3. NAR Supreme Court judge;

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

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

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

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

14.1.8. law academician.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 6.1.5.

Judges are promoted:

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

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

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

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

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

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

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

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

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

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

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

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

Assessment of compliance

Benchmark 6.2.1.

Court presidents are elected or appointed:

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

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

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

Article 94 of the Law on Courts and Judges states:

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

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

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

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

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

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

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

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

Article 90 of the Law on Courts and Judges reads:

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

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

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

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

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

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

Benchmark 6.2.3.

The level of judicial remuneration:

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

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

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

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

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

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

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

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

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

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

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

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

Assessment of compliance

Benchmark 6.3.1.

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

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

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

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

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

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

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

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

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

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

Benchmark 6.3.2.

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

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

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

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

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

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

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

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

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

Benchmark 6.3.3.

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

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

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

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

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

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

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

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

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

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

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

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

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

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

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

Assessment of compliance

Benchmark 6.4.1.

The law stipulates:

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

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

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

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

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

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

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

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

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

Benchmark 6.4.2.

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

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

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

Benchmark 6.4.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 6.4.4.

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

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

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

Assessment of non-governmental stakeholders

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

7 Independence of public prosecution service

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

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

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

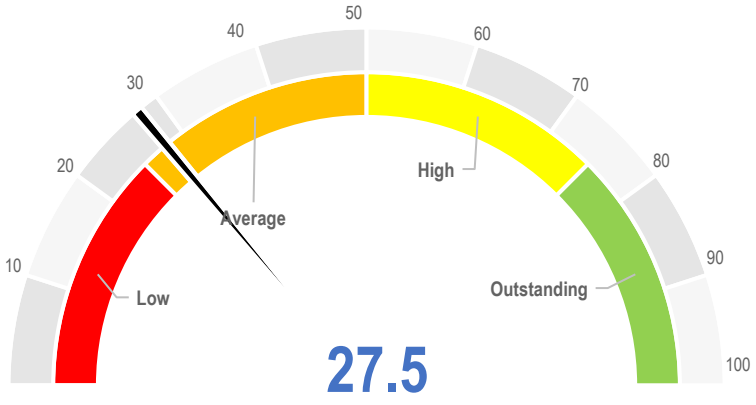
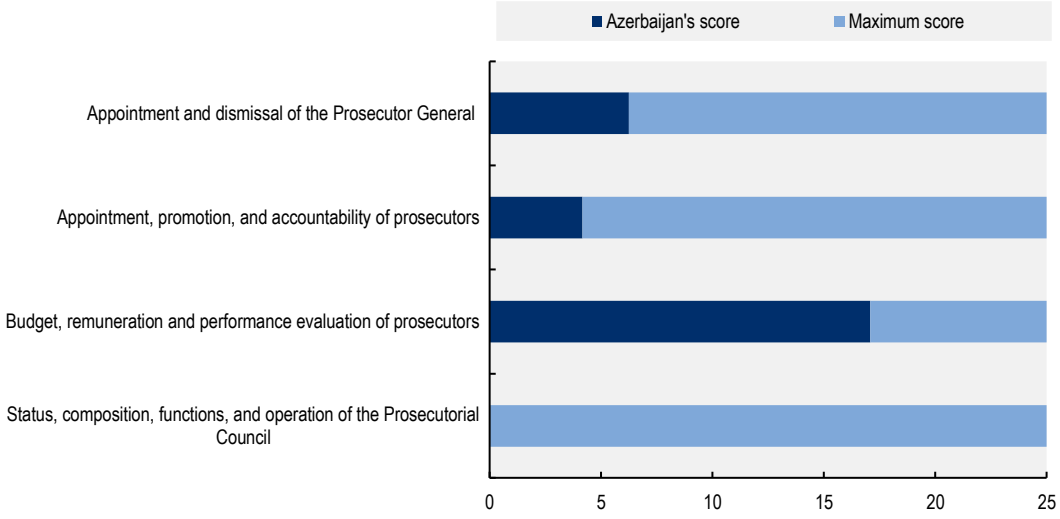


Figure 7.2. Performance level for Independence of Public Prosecution Service by indicators



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

Assessment of compliance

Benchmark 7.1.1.

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

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

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

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

Benchmark 7.1.2.

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

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

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

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

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

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

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

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

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

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

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

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

Benchmark 7.1.3.

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

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

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

Assessment of compliance

Benchmark 7.2.1.

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

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

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

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

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

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

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

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

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

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

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

Benchmark 7.2.2.

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

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

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

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

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

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

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

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

Benchmark 7.2.3.

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

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

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

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

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

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

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

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

Benchmark 7.2.4.

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

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

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

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

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

Assessment of compliance

Benchmark 7.3.1.

The budgetary funding allocated to the prosecution service:

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

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

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

Benchmark 7.3.2.

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

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

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

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

Benchmark 7.3.3.

Performance evaluation of prosecutors is carried out by:

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

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

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

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

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

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

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

Background

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

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

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

Assessment of compliance

Benchmark 7.4.1.

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

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

Benchmark 7.4.2.

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

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

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

Benchmark 7.4.3.

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

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

Benchmark 7.4.4.

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

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

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

Benchmark 7.4.5.

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

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

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

Benchmark 7.4.6.

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

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

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

Assessment of non-governmental stakeholders

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

8 Specialized anti-corruption institutions

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

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

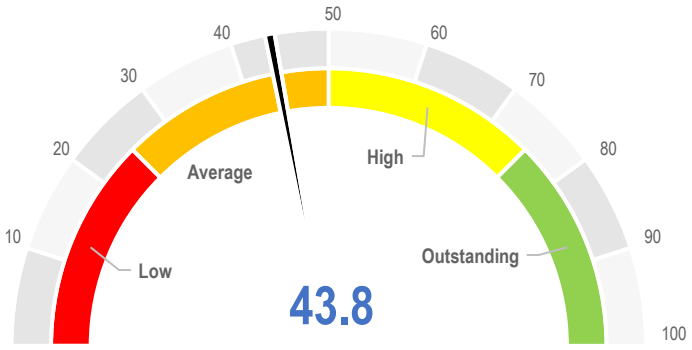
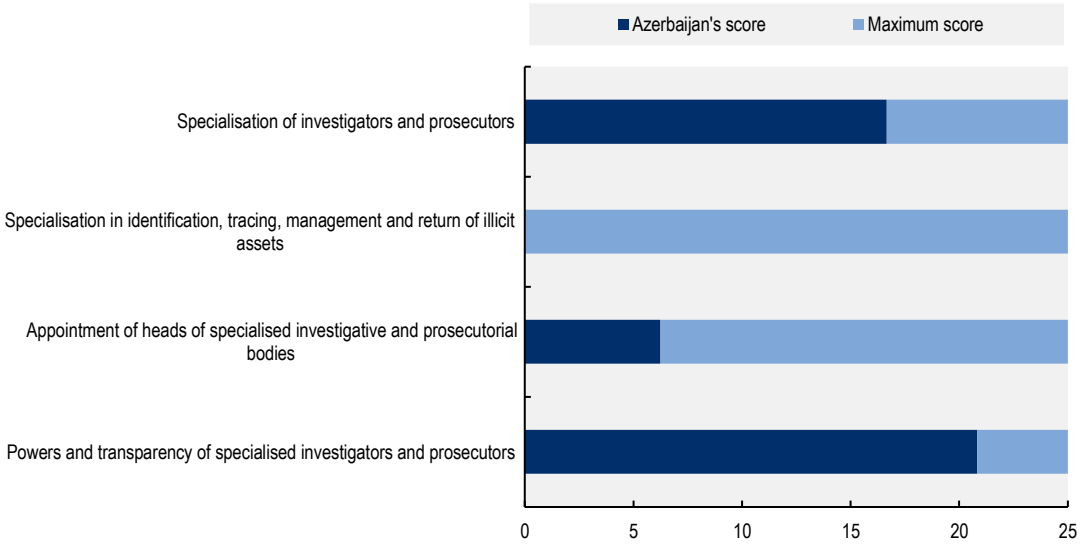


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators



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

Assessment of compliance

Benchmark 8.1.1.

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

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

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

Benchmark 8.1.2.

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

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

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

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

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

Benchmark 8.1.3.

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

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

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

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

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

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

Assessment of compliance

Benchmark 8.2.1.

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

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

Benchmark 8.2.2.

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

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

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

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

Assessment of compliance

Benchmark 8.3.1.

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

	Element	Compliance
A.	The legislation regulates the main steps in the process	N/A
B.	The information about the outcomes of the main steps is published online	N/A
C.	The vacancy is advertised online	N/A
D.	The requirement to advertise the vacancy online is stipulated in the legislation	N/A
E.	Any eligible candidates could apply	N/A
F.	The selection is based on an assessment of candidates' merits (experience, skills, integrity) in legislation and in practice	N/A

The current head of the Directorate was appointed by the order of the President of the Republic of Azerbaijan in 2020; therefore, the benchmark is not applicable. However, the monitoring team provides the analysis below for the possible improvements to the current selection procedure.

Article 131 of the Constitution of the Republic of Azerbaijan provides for the appointment of the deputies of the Prosecutor General (the head of the Directorate is ex officio one of them) by the President of the Republic of Azerbaijan based on the motion of the Prosecutor General. The legislation does not provide for online advertising of the vacancy. According to authorities, criteria for the promotion of prosecutors established by the Law "On Service in the Prosecutor's Office" (Article 11) are applied for the appointment of the head of the Directorate. The law is silent on procedures for the application of the criteria. In addition, the criteria of "professionalism, results of labour, moral qualities" are too vague to be considered "clear criteria" since they allow for wide discretion in their interpretation. The main steps in the process of selection and appointment of the head of the Directorate are not regulated by legislation. Publication of information on the different steps of the process of selection and appointment to inform the public is not foreseen. The vacancy for the head of the Directorate is neither published online nor available to the public. A person from outside cannot apply for this position. Competition of the inside candidates of the Office of Prosecutor is not applicable for the selection of the head of the Directorate. The head of the Directorate is appointed without competition.

Benchmark 8.3.2.

The procedure for pre-term dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators, which specialise in investigating corruption, is clear, transparent, and objective:

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

Element A is compliant. General grounds for termination of service in the prosecutor's office established by the Law “On Service in the Prosecutor's Office” (Article 29) and the Prosecutor’s Office Act (Article 34) are applicable to the dismissal procedure of the Head of the Directorate. Pursuant to Article 133 of the Constitution, the director of the Directorate (at the same time he/she is the deputy Prosecutor General) is dismissed by the President of the Republic of Azerbaijan based on a motion of the Prosecutor General. The authorities noted that grounds for dismissal for “inaptitude for the post, as decided by the Attestation Commission” are not applicable to the Head of the Directorate based on the exclusion provided in Article 304 of the “Rules on Activity of the Prosecutor's Office”. It provides that all prosecutors, except those holding designated posts, including deputy Prosecutor General, undergo attestation once every five years. This provision excludes the Head of the Directorate from undergoing an attestation procedure, and theoretically receiving an “inaptitude for the post” evaluation.

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

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

Element C is not compliant. Article 133 of the Constitution of the Republic of Azerbaijan and other pieces of legislation explicitly establish just two steps in the procedure for dismissal of the Head of the Anti-Corruption Directorate: 1) a motion of the Prosecutor General to the President of Azerbaijan; and 2) approval or rejection of the motion by the President. The law is silent on many substantial steps in this procedure, like who can initiate the dismissal procedure, who should establish the facts confirming the ground(s) for dismissal, how an inquiry on allegations should be conducted, etc.

Element D is not compliant. According to Article 149 of the Constitution of the Republic of Azerbaijan, normative legal acts (including decrees and orders of the President) shall be published. However, there is no requirement in the primary laws of the country to publish any information related to the motion of the Prosecutor General to the President as a separate step of the dismissal procedure.

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	N/A

There was no dismissal of the Head of the Directorate in 2022.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

	Element	Compliance
A.	The legislation regulates the main steps in the process	N/A
B.	The information about the outcomes of the main steps is published online	N/A
C.	The vacancy is advertised online	N/A
D.	The requirement to advertise the vacancy online is stipulated in the legislation	N/A
E.	Any eligible candidates could apply	N/A
F.	The selection is based on the assessment of candidates' merits (experience, skills, integrity)	N/A

The current head of the Directorate was appointed by the order of the President of the Republic of Azerbaijan in 2020; therefore, the benchmark is not applicable. However, the monitoring team provides an outline of the selection procedure, as stipulated by the legislation, below.

The legislation provides for just two steps of the selection procedure for appointing the Head of the Directorate. Article 133 of the Constitution stipulates that the Head of the Directorate is appointed by the President based on the motion of the Prosecutor General. A reference to the same provision of the Constitution is provided in Article 11-1 of the Prosecutor's Office Act as well. The legislation is silent on the procedures applied for the selection of a candidate to be included in the motion of the Prosecutor General to the President of the Republic of Azerbaijan. There is no requirement in the legislation to advertise vacancies for the Head of the Directorate online. In practice, it has not been advertised either. There is no procedure for any eligible candidate to apply. Instead, the selection is conducted by the Prosecutor General. Criteria used for the appointment of the Head of the Directorate are envisaged by the law "On Service in the Prosecutor's Office". According to Article 11 of the Law, consideration is given to a candidate's professional level, results of work, and moral qualities. The monitoring team could not verify

that these merits are being considered in practice. The Head of the Directorate is appointed by the order of the President of the Republic of Azerbaijan, which is published according to Article 113 of the Constitution.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Assessment of compliance

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

Pursuant to Article 5 of the Law on Operational - Search Activities, operational activities on corruption-related offences are carried out only by a unit of the Prosecutor's Office specialised in the fight against corruption, which is the Directorate. Its powers and duties are envisaged by Article 11-1 of the Prosecutor's Office Act of the Republic of Azerbaijan, which includes conducting preliminary investigations and operational-search activity on corruption crimes. The list of operational-search activities available to the Operational Department is set out in Article 10 of the law “On Operational-Search Activities”. Covert surveillance, interception of communications, and undercover investigations are included. Application of wiretapping and intercepting communications is subject to the prior authorization of the court. In the exceptional cases set by the law, these measures can be implemented without the prior authorization of the court, but a reasoned decision substantiating the implementation of the operational measure should be submitted to a court that has the supervisory authority and the prosecutor in charge of procedural management of the pre-trial investigation.

Thus, the Directorate has the powers to apply covert surveillance and conduct undercover investigations through its own Operational Department, and to technically conduct interception of communications and wiretapping through (with the help of) the SSS. The country provided the examples of performing these functions by the Directorate (directly or through SSS) in practice. The interception of conversations conducted on the telephone or other means of communication, and of information sent over communication media, and other technical means can also be carried out as an investigative measure with the prior authorization of the court. Thus, the specialised anti-corruption investigative body, the Directorate, has the powers to apply covert surveillance and conduct undercover investigations through its own Operational Department, and to technically conduct interception of communications and wiretapping through (with the help of) the SSS. The authorities provided the examples of carrying out these measures by the Directorate in practice.

The Directorate indicated that it would be more effective in investigating corruption if it had its own technical capacity for intercepting telephone communications, which is currently being technically carried out by the State Security Service.

As concerns element B, investigators of the Investigation Department of the Directorate have access to tax, customs, and bank data in accordance with the CPC. A court order is required to access information

about financial transactions, bank accounts or tax payments (CPC, Article 177.3.6). Customs information for the purposes of investigation can be obtained by conducting a seizure that requires prior judicial authorization (CPC, Article 245). The Government provided practical examples of accessing tax, customs, and bank data for investigation purposes. The Directorate pointed out the need to strengthen methods of faster access to banking information.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	x
C. A number of terminated investigations with grounds for termination	✓

The Directorate prepares semi-annual and annual reports on its activities. In 2022, the Directorate published on its official website the annual report for 2021[16], and the semi-annual report for 2022[17]. Both reports contain information, statistics, and other pertinent data on its activities and investigations. Reports include comparisons in statistics with previous years and dynamics in the number of cases, statistical information on the Directorate's activities in various fields of its competence, analyses, and suggestions for improving the effectiveness of its activities. In addition, the report contains the statistics on complaints received from citizens, criminal investigations opened, cases filed with courts, and terminated cases.

Azerbaijan complies with element A. A number of criminal investigations opened on corruption offences by the Directorate were published twice in 2022: in the yearly activity report of 2021 that was published early in 2022, and in the semi-yearly report of 2022.

Element B is not compliant. The yearly activity report of 2021 and the semi-yearly report of 2022 included statistics about cases and defendants that were filed with courts for adjudication. The number of persons was further broken down by the area of activity in which the defendants were employed when offence was committed. However, information is not disaggregated by level and types of officials as required under the benchmark.

As concerns element C, a number of terminated investigations with grounds for termination were published twice in 2022, specifically in the yearly activity report for 2021, and in the semi-annual report for 2022. According to the semi-annual report, in the first half of 2022, 16 criminal investigations were terminated. Out of these, 4 cases were terminated due to the absence of an element of offence; 2 cases were terminated due to the expiration of the limitations period; and 10 cases were terminated on the grounds provided by Articles 40.2-40.3 of the CPC (which in turn refer to grounds for termination outlined in Articles 72 to 74 of the CC, such as sincere regret; for crimes against property, the possibility of termination when material damage has been compensated, part of it paid to the state budget, and the victim has no complaints; change of circumstances, etc.). Thus, element C is compliant.

[16] https://genprosecutor.gov.az/az/redirect/1565

[17] https://genprosecutor.gov.az/az/redirect/1588

Box 8.1. Good practice – taking steps to establish the Asset Recovery Office

Compensation of damages caused to institutions and citizens as a result of committed corruption crimes is one of the main priorities in the activity of the Directorate. To specify, over 52 million manats (almost 70% of the total material damage inflicted on another's property and filed in investigations commenced in 2022) have been paid to the Directorate in 2022. In addition, in 2022, the inflicted damage of over 44 million manats was recovered in cases that were terminated in 2022.

Azerbaijan is taking steps to establish a fully-fledged Asset Recovery Office. The ongoing Twinning project envisages the inclusion of property management functions in the powers of the Department for the Coordination of Special Confiscation Issues, which will be further transformed into an asset recovery office.

Current legislation does not allow the sale of perishable assets, that require immediate management or involve high management costs, until a final court decision. Azerbaijan is in the process of amending the CPC to resolve this flaw.

9 Enforcement of Corruption Offences

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

Figure 9.1. Performance level for Enforcement of Corruption Offences is average

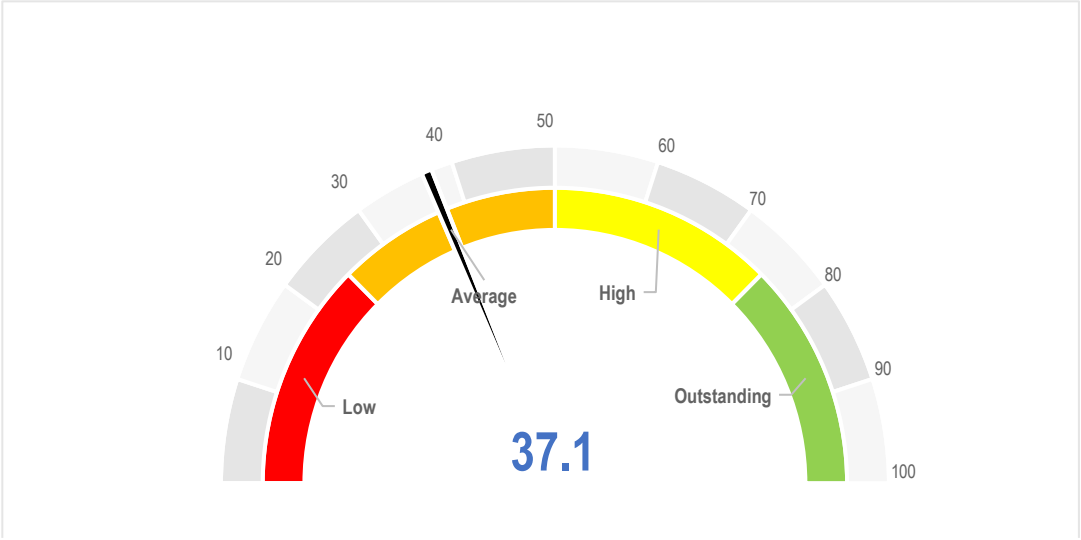
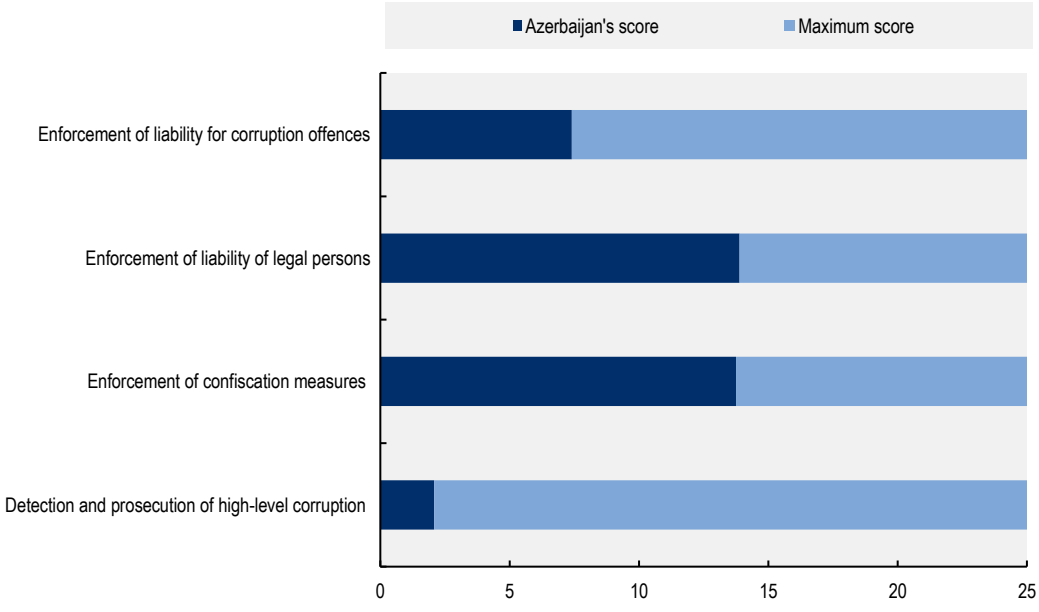


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators



Indicator 9.1. Liability for corruption offences is enforced

Background

This indicator tracks the enforcement of corruption offences through criminal sanctions. In most cases, its benchmarks require that sanctions for offences be "routinely imposed," meaning that the national authorities must provide at least three examples of specific cases of the first instance convictions delivered in 2022 for the respective offences.

Assessment of compliance

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	X
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	X

To show compliance with this and other benchmarks requiring the routine application of sanctions, the authorities must provide at least three examples of sanctions (convictions) applied by the first instance courts in 2022 for each element of the benchmark. Authorities provided examples of three cases to meet the requirements of elements A (active bribery in the public sector) and B (passive bribery in the public sector). The number of convictions under elements C (active or passive bribery in the private sector) and F (trading in influence) did not reach the threshold of three cases under each of them. Authorities provided only two valid cases of convictions for bribery in the private sector.

The criminal law in Azerbaijan does not distinguish between public sector and commercial bribery. Bribery in the public and private sectors is sanctioned under Article 311 (passive bribery) and Article 312 (active bribery) of the CC. Offering, promising and giving a bribe, bribe solicitation, acceptance of an offer/promise and receipt of a bribe, as well as "illegal influence over the decision-making of an official (trading in influence)" are criminalised in Azerbaijan (articles 311, 312, and 312-1 of the CC).

Table 9.1. Statistics on the total number of convictions in 2022

Number of persons convicted for:	Year
Active bribery in the public sector	62
Passive bribery in the public sector	37
Active bribery in the private sector	0
Passive bribery in the private sector	2
Offering or promising of a bribe as a stand-alone offence	0
Bribe solicitation or acceptance of an offer/promise of a bribe as a stand-alone offence	0
Bribery with an intangible and non-pecuniary undue advantage	0
Trading in influence	2

Source: Provided by Azerbaijani authorities.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	X

The offence of illicit enrichment is not criminalised under national legislation. The legislation also does not provide for the confiscation of unexplained wealth through administrative or civil proceedings. However, the Government noted that draft legislation against illicit enrichment has been prepared as part of the implementation of the National Action Plan 2022–2026 and has been sent to relevant governmental bodies for their feedback.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

In 2022, no foreign bribery investigation was opened or conducted by the Investigation Department of the Directorate or any other national investigation agency.

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	X
B. Money laundering sanctioned independently of the predicate offence	X

Authorities provided two examples of convictions for money laundering with a predicate offence of public sector corruption. In one case, a public official was convicted of laundering proceeds from passive bribery. In another case, a public official was sentenced for laundering proceeds from misappropriation and abuse of power. These examples demonstrate the commitment of authorities to prosecute money laundering with possible public sector corruption as a predicate offence. However, they do not reach the required number of three convictions under the benchmark.

With respect to element B, the authorities provided two cases in which three individuals were convicted for money laundering only; nevertheless, these convictions appear to be third-party money laundering where individuals were found guilty of laundering proceeds from identified predicate offences.

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	✓

The Government referred to the CC that includes the "deprivation of the right to occupy certain positions or to be engaged in certain activities" as an autonomous sanction or as a mandatory punishment when a public official is sentenced to imprisonment. Deprivation of the right to occupy certain positions or to be engaged in certain activities may be applied only if provided as an available sanction under a specific criminal offence. However, it is not provided for all corruption offences and when it is provided, in some cases, it is an optional or alternative punishment that is at the discretion of the court to impose. The court may impose it as an auxiliary sanction in cases where it is not provided under a specific offence. To sum it up, the CC leaves some gaps for public officials sentenced for a corruption offence to escape dismissal from a public office under certain preconditions. From the many examples of convictions for corruption crimes provided by the government, it can be concluded that in practice, the courts apply as a sanction the deprivation of the right to occupy senior and materially responsible positions in state and municipal bodies (meaning that not all public positions are covered by the mentioned prohibition). However, the authorities assured that in practice, convicted public officials are always dismissed from public service, and there were no exceptions in 2022.

In addition, the Government referred to the Civil Service Law (Article 37.1.10) as stipulating that the civil servant should be dismissed if a conviction becomes effective. Other sectorial laws on public service (for instance, on judges, prosecutors, and the police) also provide for the mandatory termination of office in case of conviction.

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

	Element	Compliance
A.	Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	X
B.	The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	X
C.	The special exemption is not allowed when bribery is initiated by the bribe-giver	X
D.	The special exemption requires active co-operation with the investigation or prosecution	X
E.	The special exemption is not possible for bribery of foreign public officials	X
F.	The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	X

Pursuant to Article 312 of the CC, a person who gave a bribe to an official should be exempted from liability in the existence of the following circumstances: 1) the bribe was given as a result of intimidation by an official; 2) a person has voluntarily reported the bribe to the relevant state authority. The Government claimed that voluntary reporting could be a ground for exemption from liability only if the following

preconditions were met: a) a bribe-giver reports the offence on his/her own initiative before it is detected by the law-enforcement bodies, or b) a bribe-giver reports the offence on his/her own initiative after the law-enforcement bodies have become aware of alleged bribery from other sources under the condition that the reporting person was not aware of this fact. There is no requirement in the legislation that a special exemption be valid only for a short period of time after the commission of an offence. There is no clear prohibition in the law against applying a special exemption to bribe-givers who initiated the bribery. The provisions of the CC likewise do not exclude foreign bribery offenses from the application of a special exemption.

With respect to element D, the authorities explained that voluntary reporting is a broad concept and encompasses not only notifying state authorities about the offence but also active cooperation with them for the purposes of detection of all participants in the offence, tracing direct proceeds and derivatives of the offence, as well as means and tools used for the commission of the crime. The authorities referred to the decision of the Constitutional Court[18] that provided a legal interpretation of the concept of voluntary confession / reporting. According to the Decision, "voluntary confession means that the guilty person, without coercion, voluntarily presents himself to the criminal prosecution authorities or other state authorities and provides honest information about the committed or prepared crime or his participation in that crime. Also, actively helping to solve the crime is expressed in the fact that the person gives a correct statement during the investigation about all the circumstances known to him in connection with the committed crime, in finding the participants of the crime, in finding the objects or tools and means obtained by the crime, and in helping the investigative bodies discover the traces of the crime. In the opinion of the monitoring team, the decision of the Constitutional Court is irrelevant as a specific ground for release from criminal liability under article 312 of the CC. The decision of the Constitutional Court interprets articles 59 and 60 of the CC as an instrument of the general part of the CC designed for softening the punishment, not for release from responsibility. Therefore, the Decision of the Constitutional Court cannot be applied to interpret the Note to Article 312, which is a provision of the Special Part of the CC.

With respect to element F, Article 40.3 of the CPC stipulates that when the circumstances provided for in the relevant articles of the Special Part (like Note of article 312) of the CC are established for the release of a person from criminal liability, criminal prosecution shall not be initiated or terminated based on the decision of the investigator agreed with the prosecutor. It follows that a special exemption is neither applied by the court nor is there the judicial control over its application by the prosecutor. The Government explained that there are some elements of judicial oversight provided by the CPC. Specifically, within the procedures of the judicial oversight based on Article 449.3.5 of the CPC, the court can review the termination of the case upon receipt of the complaint. In addition, the court has the right to dismiss the case on these grounds based on Article 43.1.2 of the CPC at the trial stage.

[18] Decision of the Constitutional Court of the Republic of Azerbaijan "On the interpretation of some provisions of Articles 59.1.9 and 60 of the Criminal Code of the Republic of Azerbaijan," dated 2 April 2012.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	✓
B. The expiration of time limits for investigation or prosecution	✓

There were no cases of corruption offence by a public official terminated due to the expiration of the limitations period or because of the expiration of time limits for investigation or prosecution. In 2022, there were two investigations terminated by the Directorate because of the expiration of the imitation period, though neither of them concerned corruption by a public official.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	X
D. Types of punishments applied	X
E. Confiscation measures applied	X
F. Types and levels of officials sanctioned	X

During 2022, the Directorate published its yearly activity report of 2021 and its semi-annual report of 2022. The reports were published on the official website of the Prosecutor's Office. Both reports contained data on the number of cases opened and cases sent to the court, disaggregated by the type of corruption offence. Reports include overall statistics on the number of cases ending with a sentence, and number of convicted persons, types of punishment applied, area of employment of officials sanctioned, confiscation measures applied, but they are not disaggregated by the type of corruption offence as required under the benchmark.

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	X

The Government stated that enforcement statistics on corruption offences were collected and published by the Directorate. The Directorate collected and provided to the monitoring team relevant statistics, but there were data gaps. According to the Monitoring Guide, the enforcement statistics collected at the central level should at least include the data mentioned in elements A–F of the benchmark 1.8. The enforcement statistics, collected in 2022, included general data on the number of cases ending with a sentence, and number of convicted persons, types of punishment applied, area of employment of officials sanctioned,

confiscation measures applied, though it was not disaggregated by the type of corruption offence as required under the benchmark. In addition, the monitoring team notes that neither any law, nor sub-law lays down the responsibility of the Directorate to collect corruption enforcement statistics at the centralized level.

Some corruption enforcement statistics (investigations opened, cases sent to courts, number of accused and convicted persons, etc.) were collected by the Operational and Statistical Information Directorate of the Ministry of Internal Affairs, but they were not published.

The monitoring team concluded that, in 2022, corruption enforcement statistics collectively for all law enforcement agencies mandated to investigate corruption were not collected on the central level.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Background

Articles 99-4 to 99-10 of the CC provide the legal framework for corporate criminal liability. A legal entity may be subject to liability if an offence is committed "in the favour" of the legal entity or "to protect its interests" by an official authorized to represent the legal entity, to make decisions on its behalf, or to supervise its activities, or by an employee of the legal entity as a result of non-control by those officials.

Assessment of compliance

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	✓

Article 99-4.6. of the CC sets the following exhaustive list of corruption crimes entailing liability for legal entities: abuse of power (Article 308); passive bribery (Article 311); active bribery (Article 312); exerting illegal influence on the decisions of officials (Article 312-1). Corporate liability does not cover embezzlement, misappropriation, or other diversion of property by a public official, but it has no effect on compliance evaluation under the benchmark. Still, it is recommended to close this gap in the corporate criminal liability framework to ensure a more comprehensive response to corporate entities engaged in corruption.

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

Legislation does not provide for autonomous corporate criminal liability. Criminal proceedings against a legal entity cannot be opened without prior identification of an alleged perpetrator, and proceedings against a legal entity are commenced by adopting a written decision within the investigation against a natural person (CPC, Article 487-2.1).

Even though the CC provides that "termination of criminal prosecution in respect of the physical person shall not prevent application of the criminal law measure to the legal person", corporate liability is not fully independent (Article 99-4.3). According to Article 487-2.2 of the CPC, proceedings on the application of criminal measures against a legal entity and the investigation of a criminal case under articles 99-4.1.1–99-4.1.4 of the CC in which a natural person is recognized as a suspect or accused shall be conducted in one proceeding (except as provided in Article 487-6.6 of this Code). Thus, the law does not provide for separate proceedings. If a person is not found to be a suspect or defendant, there are no procedural rules for separate criminal proceedings against a legal entity. If a specific natural person (the perpetrator) is not found, there is no possibility of initiating corporate liability proceedings against a legal entity.

The grounds for instituting separate proceedings (Article 487-6.6 of the CPC) that Azerbaijan referred to are very limited: (1) If the person dies after committing the act provided for in criminal law; (2) If the person committed the offence unconsciously (excluding circumstances requiring the application of coercive measures of a medical nature to such persons); (3) If there are grounds under the provisions of criminal law to absolve the suspect of criminal responsibility; (4) If the person has to be released under an amnesty act.

A criminal case may not be commenced or may be discontinued if the person is absolved of criminal responsibility by the decision of the preliminary investigator and investigator, with the agreement of the prosecutor, in the following circumstances covered by Articles 72–75 of the CC of the Azerbaijan Republic: (1) Where the person evinces sincere remorse; (2) Where the person is reconciled with the victim; (3) In the event of a change of circumstances; (4) If the statute of limitations expires.

Criminal sanctions cannot be imposed on a legal entity if an officer of the entity who committed a crime for the benefit of the entity or in its interests is discharged from liability due to the expiration of the statute of limitations (Article 99-9 of the CC).

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	✓

Pursuant to Article 99-5 of the CC, the following sanctions are available for legal persons: fine; confiscation; deprivation of the legal person's right to be engaged in certain activities; liquidation (abolition) of the legal person.

The amount of the fine applicable to legal entities may vary from AZN 50,000 up to AZN 200,000 (approximately EUR 27,000 up to EUR 108,000[19]) or between onefold and fivefold of the damage caused or earned income.

According to the CC, fines are determined by considering the economic and financial situation of a legal entity. The penalty applied to a legal entity cannot exceed the half of the value of the legal person's property (Article 99-6.4).

The maximum fine of AZN 200,000 raises concerns regarding its dissuasiveness and proportionality. High-level corruption may inflict damages and/or produce illegal profits of much bigger value, and imposing an

[19] Exchange rate as of July 2023

equivalent or manyfold fine may sometimes be the only available tool to recover damages inflicted or to take away profits from criminal activity.

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	✓

According to Article 99-5 of the CC, the following non-monetary sanctions can be imposed on legal entities: liquidation of the legal entity, and deprivation of the right to engage in certain activities. The latter includes a cancellation of the special permit (license) to engage in certain types of business, as well as a prohibition of the conclusion of certain agreements, issuing of shares or other securities, receipt of state subsidies, or other benefits, or engagement in other activities (Article 99-7 of the CC). The list of activities mentioned in the Article 99-7 of the CC is not exhaustive, and other prohibitions may be imposed as well.

Benchmark 9.2.5.

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

The CC is silent on any opportunities for due diligence defence. No other piece of legislation or set of guidelines addresses this point. The authorities noted that Azerbaijan has a system (mechanism) in place through which a legal person may prove that necessary compliance measures have been taken to deter the offence, and so seek termination of the investigation, mitigation of sanctions imposed, or acquittal. The Government referred to provisions of the CC stipulating circumstances to be considered on application of sanctions against legal entities (Articles 59.2 and 99-5.4), but they do not explicitly refer to the due diligence defence. Article 59.2 of the CC stipulates that the list of mitigating circumstances provided by the CC is non-exhaustive, and a due diligence defence could be considered a mitigating circumstance. Such statements should still be tested in practice.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	✓

In 2022, there were no cases of monetary sanctions or confiscation of corruption proceeds applied to legal persons for corruption offences. Non-monetary sanction (liquidation) was applied to 21 legal persons in a single corruption case that is sufficient to meet the threshold under this benchmark.

Indicator 9.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Authorities provided evidence of the routine application of confiscation of corruption proceeds, including indirect proceeds and mixed proceeds. Authorities did not provide evidence of the confiscation of instrumentalities of corruption.

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	X
B. Proceeds of corruption offences	✓

The authorities referred to one case where two people were sentenced on charges of running an illegal currency exchange office and abuse of official powers. By the court's verdict, items used to maintain the operation of the exchange office (for example, a banknote counting device, and video recording cameras) were confiscated as tools of the commission of the offence. On the face of it, the confiscated articles were instrumentalities to the offence of running illegal business and not to the corruption offence of abuse of official power; therefore, they do not satisfy requirements under the benchmark. Nevertheless, the presented case law is a demonstration that authorities have the necessary legal tools for implementing confiscation of instrumentalities of crime, including corruption.

The authorities stated that there were 22 cases in which the proceeds of corruption offences were confiscated by court decisions in 2022. The authorities provided an outline of three cases where proceeds of corruption (abuse of power, misappropriation) were confiscated by the court's decision.

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	✓

The authorities stated that 12 out of a total of 22 confiscation orders in corruption cases were executed fully (every one of the 12 cases was executed 100%) in 2022.

Benchmark 9.3.3.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Confiscation of derivative (indirect) proceeds of corruption	X
B. Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	✓
C. Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	✓
D. Confiscation of mixed proceeds of corruption offences and profits therefrom	✓

Number of cases where confiscation of derivative (indirect) proceeds of corruption was applied – 0,

Number of cases where confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties was applied – 3,

Number of cases where confiscation of property, the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation), was applied – 1,

Number of cases where confiscation of mixed proceeds of corruption offences and profits therefrom was applied -1.

Benchmark 9.3.4.

The following types of confiscation measures were applied at least once in corruption cases:

Element	Compliance
A. Non-conviction based confiscation of instrumentalities and proceeds of corruption offences	X
B. Extended confiscation in criminal cases	X

The legislation does not provide for non-conviction based confiscation. The authorities noted that although non-conviction based confiscation of instrumentalities and proceeds of corruption offences is not present in national legislation, there are some elements of it. According to Article 41.1-1 of the CPC, in cases where the criminal prosecution should be terminated without exculpatory grounds, but the grounds for the application of special confiscation are determined according to the provisions of the Code, the criminal prosecution proceedings shall be continued in the manner established by the Code, and it is completed by adopting the final decision of the court. The authorities presented an example where court proceedings in a private corruption case continued after the defendant had died with a view to securing the confiscation of arrested assets. This example does not qualify as non-conviction based confiscation, since the court had to decide on the guilt of the deceased defendant before delivering a confiscation order.

Extended confiscation is not available in Azerbaijan.

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	✓

In 2022, there were no cases of the return of corruption proceeds from abroad.

According to the authorities, 17 requests to confiscate corruption proceeds were sent abroad in 2022. Authorities referred to three cases where requests for confiscation of proceeds from offences of abuse of power and misappropriation in aggravated circumstances were sent to two European Union countries. These 3 requests were sent in 2 criminal cases, both related to officials of one SOE who were convicted of corruption (abuse of power, misappropriation, money laundering, etc.). Requests were ongoing as of the end of 2022.

Indicator 9.4. High-level corruption is actively detected and prosecuted

Background

"High-level corruption" in this monitoring means corruption offences which meet one of the following criteria: A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories). B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to). A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly statutory minimum wages (or the equivalent of the minimum wage if it is not applicable) fixed in the respective country on 1 January of the year for which data is provided. The methodology also provides a definition of "high-level officials."

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

The authorities referred to four cases of convictions of heads of municipal executive bodies for corruption offences. All four defendants were sentenced to imprisonment ranging from 6 and a half years up to 12 years without conditional or another type of release.

However, it cannot be considered compliant as the country did not provide the following statistics and assurance required by the benchmark: a) statistics of all convictions for aggravated bribery offences potentially punishable with imprisonment (under relevant articles of the CC) in 2022, by indicating the position of those convicted at the time of committing the offence and amount of unlawful benefit incriminated in each such case, b) further identifying among them "high-level corruption cases" based on the criteria of high-level corruption in the Monitoring Guide and from that list of "high-level corruption

cases"– indicating which punishment was actually imposed by relevant court verdicts (of first instance, and if it helps – also appeal instance), and c) calculating the proportion of verdicts with real imprisonment imposed by courts based on provided data.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	✓
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	X
D. Does not impede the investigation and prosecution of corruption offences in any other way	X

The Constitution of the Republic of Azerbaijan provides immunity from investigation and prosecution to the following public officials: the President of the Republic of Azerbaijan, Vice Presidents of the Republic of Azerbaijan, the Prime Minister of the Republic of Azerbaijan, members of parliament (Milli Majlis), judges of the Constitutional Court and general courts, and the Ombudsman. The authorities claim that immunities do not impede the effective investigation and prosecution of corruption.

The authorities indicated that in 2022, there was only one case where procedures of lifting immunity against prosecution were implemented. It concerned a former judge of a general court. On 20 July 2022, the Prosecutor General of the Republic of Azerbaijan submitted a motion on lifting immunity to the Judicial - Legal Council. According to Article 101 of the Law "On Courts and Judges", the General Prosecutor's motion on the consent to the continuation of the criminal prosecution against the judge is reviewed within 72 hours from the day of its receipt. The next day, on 21 July 2022, the Judicial - Legal Council approved the motion on lifting the immunity of the former judge. Terms and some details of the immunity lifting process for judges are set out in the law.

With respect to the Ombudsman, the law stipulates that the immunity may be terminated only by a decision of the parliament adopted by a majority of 83 votes. Article 6 of the Constitutional "Law of the Republic of Azerbaijan "On the Ombudsman" stipulates the procedures of lifting the criminal procedural immunity of the Ombudsman.

Regulations for lifting the immunity of the President and Vice Presidents of the Republic of Azerbaijan, the Prime Minister, and members of parliament do not establish clear criteria and a transparent procedure of immunity lifting. For instance, a resolution on the removal of the President from office shall be adopted within 2 months of the Constitutional Court's submission to the Parliament. If the resolution is not adopted within the said term, then the accusations against the President shall be considered to have been rejected. Rejection by the Parliament of accusations against the President is the equivalent of judicial power to acquit an individual on criminal charges brought against him/her. While court procedures are regulated in detail by the CPC, the law is silent on what grounds and on what considerations the Parliament may reject a motion to lift the President's immunity. Equivalent gaps are present in procedures with respect to other public officials protected by the immunity.

On the face of it, other procedural immunities (against arrest, detention, search, application of covert measures, etc.) impede or most likely may impede the effective investigation and prosecution of corruption allegedly committed by public officials protected with immunity. Open and secret investigative measures before lifting the immunity are allowed only in flagrante delicto and are limited to the immediate investigative actions. Following that, an immediate lifting of immunity is required under the law. This may be a major

impediment to efficient investigation, especially in cases where immediate investigative actions that fall under the scope of protection by immunity are required.

Element A is compliant considering that the immunity in one applicable case in 2022 was lifted on the next day following the submission of the request, so no undue delay was allowed.

Element B is not compliant considering that the legislation does not provide clear criteria, e.g., considerations taken into account for lifting immunity for a range of public officials.

Element C is not compliant, considering that the procedure for lifting the immunity of high-level officials is not regulated in sufficient detail.

Element D is not compliant considering that the procedures for lifting immunity from applying investigative methods, e.g., searches on premises, may very likely impede the investigation and prosecution of the corruption offence in other ways.

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	X

The monitoring team discovered two allegations of high-level corruption linked to public officials and their family members that were published by OCCRP on its website in January[20] and February[21] 2022. The authorities stated that national law enforcement agencies had not received any information on the allegations. Further on, the authorities noted that, in accordance with Article 206(1) of the CPC, information held by the media concerning an offence committed or planned that is deemed to constitute grounds for commencing criminal proceedings, shall be sent to the prosecuting authorities after its disclosure in the press, radio, or television. In addition, the media and the authors of the information must present the documents in their possession confirming the published allegations to the preliminary investigator, the investigator, the prosecutor in charge of the investigation, or the court (Article 206(3)). Correspondence addressed to the media about an offence committed or planned that has not been published, shall be sent by media officials to the prosecuting authorities in a manner prescribed by Article 205 of the CPC (Article 206(2)). Article 205(1) of the CPC stipulates that information shall be provided in the form of a letter, a confirmed telegram, a telephone message, a radio message, a telex, or other approved form of communication. Documents confirming the commission of the offence shall be attached to the letter sent by the legal entity or official (including the media) to report the offence (Article 205(2)). Moreover, a letter reporting an offence committed or planned shall state the full name of the legal entity, or the family name, first name and father's name of the official, the official's work address, his/her connection with the offence and the source of the information, as well as information about documents attached to the letter (Article 205(3)). With respect to the obligation of reporting the source of information on alleged corruption offence, the Government referred to Article 15(2) of the Law "On Media,", endorsed on 30 December 2021, stipulating that the media cannot be requested to disclose the source of information except on a few grounds mentioned in the Article 15(3).

[20] https://www.occrp.org/en/investigations/bp-turned-a-blind-eye-to-corruption-in-prize-azerbaijan-gas-project

[21] https://www.occrp.org/en/suisse-secrets/sons-of-azerbaijani-strongman-vasif-talibov-received-millions-from-money-laundering-systems

While the CPC does not allow authorities to launch a formal investigation solely based on corruption allegations published in the media, Article 11(2)(3) of the Law “On Operative-Search Activity” stipulates that information published in the media can be the reason for the implementation of operative-search activity that may develop into a formal criminal investigation.

In the opinion of the monitoring team, the procedural duty of the media to provide the authorities with the documents at their disposal confirming published allegations of corruption is a deterrent to the publication of such allegations in Azerbaijan. Also, the lack of a procedural basis for launching criminal investigations into published allegations without an official application from the media being received, is an obstacle to the effective investigation of published allegations of corruption, especially in relation to allegations published in foreign media.

Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Azerbaijan

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The fifth round of monitoring under the Istanbul Anti-Corruption Action Plan assesses Azerbaijan's anti-corruption practices and reforms against a set of indicators, benchmarks and elements under nine performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. The report analyses Azerbaijan's efforts to build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement. A follow-up report evaluating Azerbaijan's progress in these areas will follow.

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