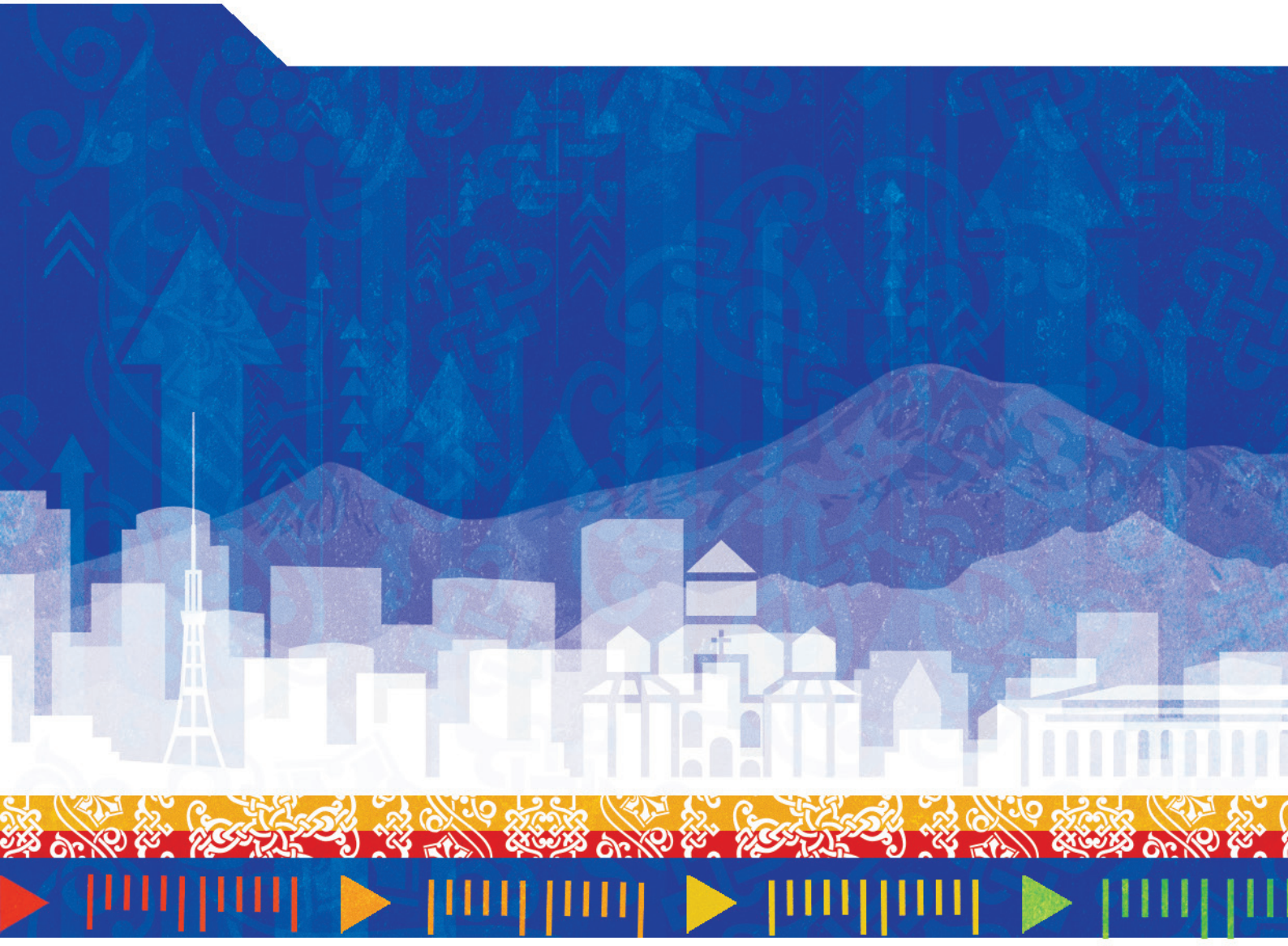
FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA

ANTI-CORRUPTION REFORMS IN ARMENIA

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

PILOT



OECD

Anti-Corruption Reforms in Armenia

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



Please cite as: OECD (2022), Anti-Corruption Reforms in Armenia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan

https://doi.org/10.1787/e56cafa9-en

© OECD 2022

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Member countries of the OECD, the Member countries of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, or the Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city, or area.

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

Foreword

This pilot monitoring report was prepared within the framework of the Istanbul Anti-Corruption Action Plan (IAP), a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN).

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

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

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

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

The pilot monitoring team for Armenia included: Mari-Liis Sööt and Kätlin-Chris Kruusmaa, Ministry of Justice of Estonia; Markiyan Halabala, High Anti-Corruption Court of Ukraine; Balázs Garamvölgyi, Office of the Prosecutor General of Hungary; Evgeny Smirnov, EBRD, Public Procurement Department; and Pauline Bertrand, OECD Public Governance Directorate, Division of Public Sector Integrity. Bolorchimeg Jargalsaikhan, Independent Authority Against Corruption of Mongolia, was an observer in the Armenia team. Inese Kuske, Chancellery of Latvia, and Vitaliy Kasko, Former First Deputy Prosecutor General, Ukraine provided assistance to all monitoring teams on cross-cutting issues of whistleblowers protection and independence of prosecutors. The OECD/ACN team included Olga Savran, Team Leader, Oleksandra Onysko, Anti-Corruption Analyst, Arianna Ingle, Communications Officer and Paloma Cupello, Team Assistant.

The National Coordinator of Armenia for the pilot monitoring was Ms. Kristinne Grigoryan, Deputy Minister of Justice, assisted by Ms. Mariam Galstyan and Ms. Hasmik Tigranyan, Department of Anti-Corruption Policy Development and Monitoring of the Ministry of Justice.

The pilot assessment of Armenia was launched in December 2020. Armenia provided replies to the questionnaire and supporting materials (laws, statistics, etc.) in April 2021. The virtual on-site visit to Armenia took place on 17-30 May 2021 and included sessions with governmental and non-governmental representatives. Civil society organisations, business and international representatives provided replies to the monitoring questionnaire, participated in the on-site visit and commented on the draft assessment report. Armenia provided additional information requested by experts after the virtual visit. [Following bilateral consultations, the plenary meeting of the OECD/ACN held on 25-29 October 2021 adopted the pilot monitoring report of Armenia.]

Executive summary

The Anti-Corruption Strategy of Armenia and its Action Plan for 2019-2022 are solid policy documents. They were developed based on the assessment of the previous strategy implementation and taking into account available research conducted by non-governmental and international partners. The Strategy focuses on reforms of anti-corruption institutions, but does not target high-risk areas or high level corruption. The development of the Strategy was inclusive and transparent. The Strategy includes a budget estimate, but there is no report on budget implementation in the same format. In 2020, 62% of actions from the Strategy's Action Plan were implemented. The performance was impacted by the COVID-19 and the war. The monitoring of Strategy implementation is conducted by the Anti-Corruption Policy Development and Monitoring Division of the Ministry of Justice, its implementation is coordinated by the focal point in the implementing state bodies, though they need to receive more methodological and training support. The civil society has a possibility to contribute to the monitoring through their representation in the Anti-Corruption Council and by submitting independent reports, however there were no such reports submitted in 2020. The monitoring reports are based on the outcome indicators and are published online. It is foreseen that the final assessment of the Strategy will be conducted using impact indicators such as TI and other international indexes, which do not relate to specific activities of the Strategy and more specific indicators and surveys may be needed.

In March 2018, Armenia adopted the new versions of the Law on Civil Service and the Law on Public Service. The new laws considerably improved the conflict-of-interest framework for public officials, although shortcomings remain. For example, the law provides narrow ranges of methods for conflict-of-interest (COI) resolution and the Corruption Prevention Commission currently lacks dedicated staff to administer a highly decentralized system with a unified methodological and administration principles. There was a delay in establishing the CPC, but it finally became operational in 2019, its human resources need to be further strengthened. It showed good effort in addressing public allegations about COI of high-level officials, but no dissuasive sanctions have been applied yet due to loopholes in legislation. No statistics is yet available on implementation of COI rules and other restrictions. According to civil society representatives, information about implementation of individual recommendations/instructions issued by the CPC regarding COI resolutions is not sufficiently accessible, and the track record of implementation of sanctions is low, in part because the CPC and other integrity functions do not compile sufficient enforcement data.

Armenia strengthened the implementation of asset and interest disclosure mechanisms for certain categories of elected and non-elected public officials, including ministers, MPs, judges and prosecutors, through the adoption of the Law of the Public Service in 2018 and 2020 Decision, establishing the sample forms of declarations of property, incomes, interests and expenses. Overall, Armenia provides for a tailored identification of categories of public officials submitting such declarations, clearly defines coverage of the information disclosed, and enables public availability of non-confidential information. However, there are still some gaps, e.g. a limited number of PEPs (members of the management or supervisory bodies of SOEs) are not covered by declarations regime. The Corruption Prevention Commission is tasked with analysing and publishing the declarations, maintaining the register of declarations, detecting conflicts of interests, investigating integrity violations and

imposing administrative sanctions. Several shortcomings remain, such as the lack of technical staff and the absence of an automated risk-based analysis of declarations. The CPC is currently developing a new e-register that is expected to address these shortcomings. Civil society representatives also raised concerns regarding political bias in setting up the Corruption Prevention Commission.

Armenia's Law on the System of Whistleblowing focuses on reporting procedures and is not specific enough to protect whistleblowers against retaliation. The e-platform for anonymous reports by the whistleblowers, operated by the GPO, is helpful for persons willing to report about corruption crimes. However, this system is not capable of providing protection to such persons. Internal reporting channels in line ministries are not effective. There is no possibility for the whistleblowers to report to media and other external channels. The Law does not foresee all necessary forms of protection, and no protection was ever provided to whistleblowers in Armenia so far. There is no dedicated central authority to oversee the implementation of the Law. The government is aware about the shortcomings of the current system and is planning to overhaul it in the near future.

Armenia has started reforms of its judiciary towards international standards and good practices; integrity of the judiciary is one of the priorities of anti-corruption reform. Judges enjoy life tenue, and they enjoy greater freedom than under the previous regime. The Supreme Judicial Council was created as a self-governance body aimed to ensure independence and integrity of judges. Whilejudges themselves elect half of its members, the other half is elected by the parliament without transparent selection or merit-based criteria. The Council plays a key role in the career of the majority of judges, but this excludes judges of the Court of Cassation. Further improvements are needed in appointment and promotion procedures, grounds for disciplinary proceedings, distribution of cases, as well as the transparency of the Council. The practice of integrity vetting and evaluation of judges needs to be monitored to ensure that it does not undermine their independence. The funding of the judiciary and remuneration of the judges and judicial staff are low. Overall, as one non-governmental partner put it, the reforms have so far only touched the surface, and deeper reforms and renewal of the judiciary are needed to rebuild public trust. In addition, Armenia decided to create an Anti-Corruption Court and agreed to involve international experts in the selection of its judges. The relevant legislation was adopted in April 2021 and is expected to enter into force on October 29,2021.

The organisation of the Prosecutor General's Office of Armenia is based on a strong hierarchy. The Prosecutor General is elected by the Parliament without a merit-based or transparent competition; the grounds for dismissal are open to political decisions. There is no prosecutorial governance body in Armenia that would protect prosecutors' autonomy. Their selection and promotion is not based on merits either and is in discretion of the Prosecutor General. Cases are allocated among prosecutors by their line managers. Discipline is important in the GPO and disciplinary sanctions are applied regularly, but there are not clear and objective grounds. The GPO had very little transparency. On the positive side, the state budget fully satisfied the GPO's funding requests. There is a new department of the GPO that deals with forfeiture of illegal assets – that was established with the assistance of international partners – Government is open to further developing this department. Good practices developed in this department may help implement future reforms of the GPO.

The public procurement law of Armenia is overall compliant with international standards and good practices. It covers all economic activities of public interest, clearly defines exemptions from competitive procedures, and procurement is open to foreign participants. The e-procurement covers all stages of procurement, and contract implementation stage was included in 2021. At the same time, the overall share of procurement is relatively low in the GDP, and the share of single-source procurement is very high, amounting to one-half of all public procurement value. No sanctions were enforced in 2020 for COI or corruption in public procurement; there is no system to debar legal persons convicted for corruption. There is low public trust in integrity in public procurement.

Business integrity is not yet on the anti-corruption agenda of the Armenia's government. The Corporate Governance Code of Armenia is outdated and does not require the boards of companies to manage corruption

risk. The new Corporate Governance Code that includes such provisions and control mechanism was prepared 2 years ago, but is still pending approval. Public disclosure of beneficial ownership of companies and limited control of this information is ensured only in the mining sector; a new system of disclosure is expected in 2021. There is a small programme of incentives for compliance with tax and customs regulations, no similar programmes support integrity in the private sector. There are no institutions in Armenia dedicated to receive reports about corruption related concerns from companies and to provide protection to companies' legitimate interests. While civil society studies corruption risks in business operations, these studies are not systematic and their recommendations are not followed by the government. The State did not fulfil its role of an active and informed owner of SOEs and did not ensure the integrity of their governance structure and operations. Only some SOEs undergo external audit, so this practice is not regular.

Regarding the criminalisation of corruption, Armenia is making efforts to comply with the international anti-corruption legal standards. The new Criminal Code, promulgated on 27 May 2021, will introduce corporate liability for corruption. Armenia should start enforcement of this regime in practice as soon as the relevant provisions of the new Criminal Code will enter into force. Further amendments to the new Criminal Code will be needed to bring it in compliance with the international standards and good practices.

The evaluation of the enforcement of corruption offences is difficult due to two factors: gaps in statistical data and recent substantial changes in criminal law, which did not affect actual enforcement practice yet. This is also true regarding the investigations and indictments of high ranking officials: while there were several cases in the last years, high-level corruption cases are not reflected as a separate category in the statistics on adjudication of corruption. The statistics on detection, investigation and prosecution of corruption cover some data on high-level officials, but do not include information on high-level corruption.

The functioning of the specialised anti-corruption law enforcement bodies suffers from exceptions and overlaps of competences, both at the level of investigation and prosecution of corruption cases. The specialisation in practice is often nominal, as anti-corruption investigators and prosecutors often deal with other types of crimes. The envisaged changes in the legislation affect drastically the institutional framework, aiming at creating more effective environment for investigation of high-level corruption cases. The establishment of the Anti-Corruption Committee (ACC) will bring Armenia closer to the level of specialisation required by international standards, but it is not yet operational, so it is impossible to evaluate whether a stand-alone body will be better performing in investigation of corruption in Armenia.

The investigative authorities have direct access to various sources of information and use mechanisms to obtain bank data without obstacles. Still, the centralised registers of bank accounts and beneficial owners have to be put in place to enhance proactive tracing and recovery of assets.

Armenia established the Department for Confiscation of Illicit Assets as a dedicated body to conduct financial investigations, to trace and recover assets. Nonetheless, its competence is restricted to the recovery of assets in civil proceedings. There are also no specialised practitioners in the management of recovered assets. While the legal framework sets out a basis for criminal confiscation in corruption cases, the absence of the track record on application of seizure and confiscation measures speaks for itself. The legal arrangements and the practice concerning confiscation of indirect proceeds, value-based confiscation, mixed proceeds, non-conviction based or extended confiscation do not exist.

Table of contents

Acronyms 11

Country Assessment 12

1 Anti-Corruption Policy 14

Indicator 1.1. The anti-corruption policy is up-to-date, evidence-based and includes key corruption risk areas 14
Indicator 1.2. The anti-corruption policy development is inclusive and transparent 17
Indicator 1.3. The anti-corruption policy is effectively implemented 19
Indicator 1.4. Coordination and support to implementation is ensured 23
Indicator 1.5. Regular monitoring and evaluation is ensured 27

2 Conflict of Interest 32

Indicator 2.1. Legal and institutional framework on conflict of interests is in place 32
Indicator 2.2. Unbiased and vigorous enforcement of regulations is ensured 38
Indicator 2.3. Information on COI is published 42

3 Asset and Interest Disclosure 44

Indicator 3.1. Asset and interest disclosure applies to high corruption risk positions 44
Indicator 3.2. Asset and interest disclosure is comprehensive and regular 46
Indicator 3.3. An electronic system is in place and publication of information from declarations is ensured 49
Indicator 3.4. Unbiased and effective risk-based verification of asset and interest declarations is ensured with a follow-up 51
Indicator 3.5. Dissuasive and proportionate sanctions are enforced 55

4 Protection of Whistleblowers 58

Indicator 4.1. The whistleblower protection is guaranteed in law 58
Indicator 4.2. Effective mechanisms are in place to ensure that whistleblower protection is applied in practice 61
Indicator 4.3. The public is aware of and has trust in existing protection mechanisms 63
Indicator 4.4. The whistleblower protection system is operational and protection is ensured in practice 64

5 Independency of Judiciary 66

Indicator 5.1. Judicial tenure is guaranteed in law and practice 66
Indicator 5.2. Judicial appointment and promotion are based on merit, the involvement of political bodies is limited 68

Indicator 5.3. Court presidents do not interfere with judicial independence 71
Indicator 5.4. Judicial budget and remuneration guarantee financial autonomy of the judiciary and judges 73
Indicator 5.5. Status, composition, mandate and operation of the Judicial Council guarantee judicial independence and integrity 75
Indicator 5.7. Judges are held accountable through impartial decision-making procedures that protect against arbitrariness 83

6 Independence of Public Prosecution Service 88
Indicator 6.1. Prosecutor General is appointed and dismissed transparently and on the objective grounds 88
Indicator 6.2. Appointment and promotion of prosecutors are based on merit and clear procedures 91
Indicator 6.3. The budget of the public prosecution service and remuneration of prosecutors guarantee their financial autonomy and independence 93
Indicator 6.4. Status, composition and operation of the Prosecutorial Council guarantee the independence of the public prosecution service 94
Indicator 6.5. The Prosecutorial Council has broad responsibility for the functioning of the public prosecution service, is transparent and impartial 97
Indicator 6.6. Assignment of cases among prosecutors is transparent and objective; prosecutors can challenge orders they receive 100
Indicator 6.7. Prosecutors are held accountable through impartial decision-making procedures that protect against arbitrariness 102

7 Integrity in Public Procurement 106
Indicator 7.1. Public procurement system is comprehensive and well-functioning 106

8 Business Integrity 115
Indicator 8.1. Boards of directors of listed companies/publicly traded companies are responsible for oversight of the management of corruption risks 115
Indicator 8.2. Public disclosure of beneficial ownership of all companies registered in the country is ensured 117
Indicator 8.3. There are incentives for all types of companies to improve integrity of their operations 119
Indicator 8.4. There are mechanisms to address concerns of all companies related to corruption and bribe solicitation by public officials 120
Indicator 8.5. State fulfils its role of an active and informed owner of SOEs and ensures the integrity of their governance structure and operations 122

9 Enforcement of Corruption Offences 127
Indicator 9.1. Liability for corruption offences is effectively enforced 127
Indicator 9.2. Proportionate and dissuasive sanctions for corruption are applied in practice 129
Indicator 9.3. The statute of limitations period and immunities do not impede effective investigation and prosecution of corruption 133
Indicator 9.4. Enforcement statistics on corruption offences is used for analysis and available for the public 135

10 Enforcement of Liability of Legal Persons 137
Indicator 10.1. The law provides for an effective standard of liability of legal persons 137
Indicator 10.2. Sanctions for legal persons are proportionate and dissuasive 138

Indicator 10.3. Due diligence (compliance) defence is in place 139
Indicator 10.4. Statute of limitations period and investigation time limits do not impede effective corporate liability 139
Indicator 10.5. Liability of legal persons is enforced in practice 140
Indicator 10.6. Enforcement statistics on corporate liability is used for analysis and available for the public 141

11 Recovery and Management of Corruption Proceeds 144
Indicator 11.1. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials 144
Indicator 11.2. Identification and tracing of corruption proceeds are effective 146
Indicator 11.3. Confiscation measures are enforced in corruption cases 152
Indicator 11.4. The return and further effective and transparent disposition of the corruption proceeds is ensured 154
Indicator 11.5. Management of seized or frozen assets is cost-efficient and transparent 154
Indicator 11.6. Data on asset recovery and asset management in corruption cases is collected, analysed and published 155

12 Investigation and Prosecution of High-Level Corruption 157
Indicator 12.1. Fight against high-level corruption is given a high priority 157
Indicator 12.2. Criminal statistics on high-level corruption is published, analysed and used in updating policy 158
Indicator 12.3. High-level corruption is actively detected and investigated 159
Indicator 12.4. Liability for high-level corruption offences is effectively, independently and impartially enforced 162

13 Specialised Anti-Corruption Investigation and Prosecution Bodies 165
Indicator 13.1. The anti-corruption specialisation of investigators is ensured 165
Indicator 13.2. The anti-corruption specialisation of prosecutors is ensured 168
Indicator 13.3. Appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based with their tenure in office protected by law 169
Indicator 13.4. The staff of the specialised anti-corruption investigative body is impartial and autonomous from external and internal pressure 172
Indicator 13.5. The specialised anti-corruption investigative and prosecutorial bodies have adequate human and financial resources 174
Indicator 13.6. The specialised anti-corruption investigative body has necessary powers, investigative tools and expertise 176
Indicator 13.7. Work of the specialised anti-corruption prosecutors and anti-corruption investigative body or unit is transparent and audited 177
Indictaor 13.8. Specialised anti-corruption investigators and prosecutors are held accountable 178

Acronyms

ACC	Anti-Corruption Committee
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
AEO	Authorized Economic Operator
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrotism
CC	Criminal Code
CPC	Corruption Prevention Commission
CoE	Council of Europe
CPC (under PA9-PA13)	Criminal Procedure Code
CSO	Civil Society Organisation
EBRD	European Bank for Reconstruction and Development
ECHR	European Court of Human Rights
FIU	Financial Intelligence Unit
FMC	Financial Monitoring Center
GRECO	Group of States against Corruption
IDLO	International Development Law Organisation
IIA	Integrated Information Area
MDB	Multilateral Development Bank
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NSS	National Security Service
OECD	Organisation for Economic Cooperation and Development
PGO	Prosecutor General's Office
UNDP	United Nations Development Programme
SIS	Special Investigation Service
SCJ	Supreme Council of Justice
RA	Republic of Armenia
TI	Transparency International

Country Assessment

Introduction

Armenia joined the IAP in 2003; the previous assessment of Armenia under the 4th round of monitoring took place in 2018, immediately after the Velvet Revolution. The monitoring report concluded that while Armenia had further reformed its anti-corruption legislation and institutions, a genuine resolve to address widespread corruption has been lacking in the previous government. The practical enforcement of anti-corruption laws was weak, and, in the context of the monopolized economy, a widespread conflict of interest among public officials remained a serious concern. The report called upon the new government of Armenia to take bold measures against conflict of interest in the executive and the parliament, ensure judicial and prosecutorial independence and integrity, and step up the efforts to detect, investigate and prosecute high-profile and complex corruption cases, using diverse sources of information and analytical instruments.

The new government was swept into power with an ambitious anti-corruption agenda. The Ministry of Justice took the lead in developing anti-corruption strategy and ensuring its monitoring. The new strategy focused on building anti-corruption institutions. The work of the Anti-Corruption Council was re-launched, including for the first time representatives of civil society. The Anti-Corruption Policy Development and Monitoring Department in the Ministry of Justice became the secretariat to the Council. The Corruption Prevention Commission became operational in 2019. The Anti-Corruption Committee is expected to become operational by the end of 2021. To complete its anti-corruption institutional infrastructure, Armenia plans to establish the Anti-Corruption Court and agreed to engage international experts in the process of selection of judges. The legislation establishing the Anti-Corruption Court was adopted in April 2021, and after a delay caused by an unsuccessful appeal against it to the Constitutional Court, was expected to enter into force in October 2021. The government also prioritised reforms of the judiciary and the police as a part of broader reforms.

The reforms were implemented in the highly politicised environment, where the society was divided between the supporters of the new government and those who remained loyal to the previous regime that was largely based on systemic corruption. The government had to navigate carefully not to undermine the fragile internal and geopolitical stability of the country.

During 2020, the pace of reforms slowed down due to the Covid-19 pandemic restrictions. It was further impacted by the so-called 44 days war with Azerbaijan. These events have significantly shifted the priorities of the society towards security and stability. They also diverted limited resources to new urgent priorities and raised questions about the sustainability of ambitious anti-corruption reforms. Non-governmental partners interviewed during the virtual visit to Armenia in June 2021 noted that while the start of anti-corruption reforms was promising, not much was delivered in practice.

Despite these challenges, the government won in the June 2021 snap parliamentary elections, confirming the choice of the Armenian people for further reforms in their country. Going forward, it is critical for the government to deliver on its anti-corruption agenda, to bring real improvements to the daily lives of the citizens, to ensure integrity of its own ranks, and to build the sustainable base for further improvements.

This pilot 5th round monitoring report of Armenia reviews anti-corruption performance of Armenia in 2020. It includes many non-compliance ratings, which show that, despite the progress made, it is not sufficient to maintain the reform momentum. The report indicates actions that can be taken on short and medium term that can advance anti-corruption reforms further, and improve the compliance ratings in the next phase of monitoring that will review 2021 performance.

1 Anti-Corruption Policy

Armenia's Anti-Corruption Strategy and Action Plan for 2019-2022 were developed based on the assessment of the previous strategy implementation and taking into account available research, conducted by non-governmental and international partners. The Strategy focuses on reforms of anti-corruption institutions, but does not target high-risk areas or high-level corruption. There are separate strategies, e.g. for the judiciary that aim to increase their independence and integrity. The development of the Strategy was inclusive and transparent. The Strategy includes a budget estimate, but there is no report on budget implementation in the same format. In 2020, 62% of actions from the Strategy's Action Plan were implemented. The performance was impacted by the COVID-19 and the war. The monitoring of the Strategy implementation is conducted by the Anti-Corruption Policy Development and Monitoring Division of the Ministry of Justice; its implementation is coordinated by the focal point in the implementing state bodies, though they need to receive more methodological and training support. The civil society has a possibility to contribute to the monitoring through their representation in the Anti-Corruption Council and by submitting independent reports; however there was no such reports submitted in 2020. The monitoring reports are based on outcome indicators and are published online. It is foreseen that the final assessment of the Strategy will be conducted using impact indicators such as TI and other international indexes, which do not relate to specific activities of the Strategy – and more specific indicators and surveys may be needed.

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

Background

In 2019, Armenia adopted its 4th anti-corruption strategy. It was developed by the new Government that was swept into power in a so-called Velvet revolution in 2018. This Government came to power with strong anti-corruption agenda and societal pressure to deliver. The Covid-19 restrictions slowed down Government's work, and the so-called 44 days war with Azerbaijan shifted the priority of the Government to national security and other priorities. The victory of the current Government in the anticipated elections in June gives hope that the pace of anti-corruption reforms can be maintained in 2021 and beyond.

Assessment of compliance

The new Anti-Corruption Strategy of Armenia is a sound document that was developed based on results of available surveys and analysis. Its main goal is building strong institutional infrastructure for preventing and combatting corruption. However, it does not focus on high-risk sectors, and more importantly does not have an explicit focus on combatting high-level corruption, which is the main challenge in the ACN region.

Benchmark 1.1.1.

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

Armenia updated its anti-corruption policy documents in a regular policy cycle. The previous Anti-Corruption Strategy and its Implementation Plan covered the period of 2015-2018. The current Anti-Corruption Strategy and its Implementation Plan for the period of 2019-2022 was adopted by the Government in October 2019.

Armenian Ministry of Justice made use of available information when developing the anti-corruption policy. The Ministry conducted the review of implementation of the previous strategy and used in for the elaboration of the new one. It also used information provided by international surveys such as TI and IRI, and surveys conducted by domestic CSOs.

The Ministry does not commission its own anti-corruption surveys, but it conducts broader regular public opinion polls several times per year. Including a standard anti-corruption section in these polls could provide a reliable source of information for assessing the implementation and updating the Strategy in the future. The civil society was not aware of these polls. Are the results publicly available?

The Strategy and its action plan are published and available online for unrestricted public access.

Benchmark 1.1.2.

The policy addresses high corruption risk areas and sectors

The previous anti-corruption policy had a sectoral focus and addressed four sectors: health, tax, education and service delivery by police. The current Strategy admits that many previous policy objectives were not achieved due to the lack of political will, and absence of specialised anti-corruption institutions able to prevent or fight corruption and to control the implementation of the planned activities. To address this institutional weakness, the Strategy focuses on the creation of anti-corruption bodies including Corruption Prevention Commission (CPC), Anti-Corruption Committee and Anti-Corruption Court.

As the current Strategy focuses on building anti-corruption institutions, it does not include measures that target corruption in specific areas or sectors. Instead, it is foreseen that corruption risk assessments will be conducted in all state bodies, using the methodology that is currently developed by the CPC, and that these assessments will provide the basis for sectoral anti-corruption action plan. The CPC has started the development of risk assessment methodology, but it was not completed during the period of current monitoring, in 2020.

At the time of the pilot monitoring, there were two sectoral strategies in place that were linked to the Anti-Corruption Strategy. The 2019-2023 Strategy for Judicial and Legal Reforms adopted in October 2019 aims to improve the independence and impartiality of the judiciary through a range of measures, including anti-corruption vetting and better control of asset and interest declarations of judges. The Police Reforms Strategy and Action plan covering the period of 2020-2022 was adopted in January 2020, and pursue among other objectives to reform of the traffic and community police, using integrity checks and transparent

recruitment. The Police Reform Strategy was based on its internal risk-assessment. It is foreseen that when the risk-assessment methodology is ready, and various ministries develop their strategies, the CIP will monitor its implementation of these strategies in the future.

In addition to the above mentioned two sectoral strategies, several other Ministries implement their own strategies that include anti-corruption measures. For example, during 2020 Ministry of Education and Ministry of Finance continued implementation of measures to improve the quality of public education, tax and customs services, with the focus on transparency and integrity. It is expected that the Ministry of Education will soon develop its new anti-corruption strategy. Besides, non-governmental representatives interviewed during the virtual visit indicated that there were improvements made in the integrity of the customs operations, largely due to the strong leadership in this sector. At the same time, there is a lot of delays and confusion related to the issue of construction permits, as the past corruption schemes were not replaced by clear and transparent procedures.

Going forward, it would be important to finalise the corruption risk-assessment methodology, conduct sectoral risk assessments, and develop anti-corruption action plans for the sectors with high risk of corruption that will include specific preventive and repressive measures, in cooperation with non-governmental stakeholders. It will be equally important to ensure the monitoring of implementation of these action plans using indicators, and to ensure the transparency of this monitoring process in coordination with the monitoring of the Anti-Corruption Strategy.

Benchmark 1.1.3.

The policy addresses high-level corruption

The current leadership of Armenia is aware about the need to build trust of citizens in state institutions and reduce politisation in the society. To demonstrate this awareness, political leaders often make statements about zero-tolerance of corruption among their ranks. The Programme of the Government adopted in February 2019 identifies high level corruption as one of the key challenges in the area of the fights against corruption, but the new Programme for 2021-2026 adopted after the snap elections does not contain this focus. Besides, the Anti-Corruption Strategy adopted in October 2019 does not have an explicit focus on high level corruption either. At the same time, the Strategy includes the following measures that aim to prevent high level corruption:

- Action 9. Formation of mechanisms for carrying out oversight over observance of the rules of integrity of persons subject to appointment to state positions, those of judges and judge candidates, prosecutors and candidates for prosecutors, and of investigators.
- Action 14. Prescribing rules of conduct of the deputy.
- Action 17. Improving the system of declaration of property, incomes and interests. Introduction of a system of declaration of expenses.
- Action 18. Clarification of incompatibility requirements of persons holding public positions and of public servants (including clarification of incompatibility requirements of persons holding public positions and of public servants, prescribing that in case of having participation (share, stock, unity) in the statutory capital of commercial organisations, persons holding public positions and public servants may transfer it to trust management exclusively to a specialised entity in the financial market.)

- Action 19. Improvement of the institute of gifts related to the exercise of official duties of persons holding public positions and of public servants; establishment of a register of gifts.

Several of these measures have been already introduced and became functional, including the integrity checks for newly appointed judges, 7 judges that were negatively assessed by the CPC, 5 were rejected by the SCJ, however 2 of them were appointed. During the screening of new prosecutors, 2 were rejected, including 2 that received negative opinion of CPC. The preparation of the Code of conduct for MPs is also a positive development. However, these preventive measures are at early stages of development, and it is too early to assess their impact on high level corruption. At the same time, there are no specific policy measures in the Strategy that will address high level corruption through repressive mechanisms. While the strategy focuses on the reform of anti-corruption institutions, including the CPC, Anti-Corruption Committee (specialized pre-trial investigative body), and specialized Anti- Corruption court, none of these institutions have a mandate to focus on high level corruption.

In March 25, 2020 amendments in Judicial Code and other related acts (including in Law Corruption prevention commission) were made, that provided the order for integrity checks of judges. According to Article 14 of the Law “On making changes and supplements to the law on Corruption prevention commission”, the integrity be implemented in order of superiority of the bodies of the justice system, starting from the members of the Supreme Judicial Council, followed by the Constitutional Court and then other judges.

The CSO also pointed out that while the high level message of the government is about zero-tolerance of corruption, real actions are missing to address high level corruption. For e.g. single source procurement is high indicating that there is no real political will to close major opportunities for corruption. There are several ongoing criminal investigations against high level officials that were initiative in 2019, including the former President, his Chief of Staff, Judges, Deputy Minister, Head of Military Police, and more recently, in 2021, against the Deputy Chief of the General Staff of the Armed Forces of Armenia. However, the conviction rate is not known up till now, and there is no prioritisation of law-enforcement efforts on high level corruption.

To sum up, the Anti-Corruption strategy lacks an expressed objective and a focus on high level corruption, and does not include explicit measures in this regard, especially to repress high level corruption.

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

Assessment of compliance

The new Anti-Corruption Strategy was developed in thorough consultations with the civil society, as fully confirmed by the CSOs. The draft was published online; significant time was dedicated to the consolidation process. The government revised the draft based on the received comments and provided feedback and explanations on the comments that were not included in the final draft, which was also published.

Benchmark 1.2.1.

Draft policy documents are published online

The draft policy documents were published online and their discussion was encouraged through communications with the CSOs. More specifically, the first draft of Anti-Corruption Strategy and its Action

Plan for 2019-2022 were published online for public discussion on the Unified website for publication of legal acts' drafts on December 19, 2018. 91 suggestions and comments were received on the first draft, and the draft was revised for almost 90%. On 10 June 2019 the revised draft was made available on the e-draft site and also has received 84 comments, it was amended acordingly. As a result of all the discussions – e-comments and life consultations, as provided below - the draft was adopted by the Government on 3 October 2019.

Benchmark 1.2.2.

Public consultations are held with adequate time for feedback

In 2018, when the Ministry of Justice Armenia launched the development of the new Anti-Corruption Strategy and its Action Plan for 2019-2022, it invited CSOs to provide their proposals, but received very limited suggestions. On 19 December 2018 the Ministry prepared and published on-line the first draft of the Strategy, and organized its first public discussion in the framework of the EU-funded "Commitment to Constructive Dialogue" Project and in cooperation with a CSO, Anti-Corruption Coalition.[1] On 25 January 2019, Transparency International organized another consultation about the new Anti-Corruption Strategy[2]. A number of public discussions have been organised on the second draft of the Anti-Corruption Strategy, including more than 10 public discussions in Yerevan, but also in different regions.[3] The draft was also discussed 2 times during the sitting of the multi-stakeholder Anti-Corruption Council[4] and with international partners. Overall, public consultations lasted more than 1,5 year, including 94 days (in the periods of 19.12.2018 - 31.01.2019 and 10.06.2019 - 20.07.2019)that were provided to the public to comment the drafts, published on-line.

Benchmark 1.2.3.

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

The Government provided feedback to all recommendations. For instance, the feedback on recommendations submitted through the e-draft platform is publicly available and the Ministry has provided justifications for each recommendation/comment that was not taken on board, as well as a note for each

[1] Commitment to Constructive Dialogue (2018), The Draft Anti-Corruption Strategy was discussed with CSOs for the First Time.

[2] TI Armenia (2019), Anti-Corruption Agenda for Armenia, Stakeholder Discussion.

[3] Ministry of Justice (2019), The Draft Anti-Corruption Strategy was discussed in Vanadzor, Martuni;; Ministry of Justice (2019), The Draft Anti-Corruption Strategy was discussed in Goris;ARMLA (2019), "The RA Anti-Corruption Strategy under International Experience": the Two-Day International Anti-Corruption Conference took place. Infocom (2019), The Draft Anti-Corruption Strategy was discussed in Gavar.

[4] Anti-Corruption Council, Minutes of the Board Meettings. Extracts.

recommendation that was addressed in the draft. The summaries of the recommendations on both drafts are available at https://www.e-draft.am/en/projects/1439/digest and https://www.e-draft.am/projects/1733/digest. Before each governmental session, the packages of all questions included in the agenda are made publicly available at https://www.e-gov.am/sessions/. The summaries on recommendations, provided by state bodies as well as the ones provided by NGOs, are also being made publicly available.

Box 1.1. Participatory development of anti-corruption strategy

The process of development of the Armenian Anti-Corruption Strategy and its Action Plan for 2019-2022 followed best international practice.

In 2018, when the Ministry of Justice Armenia launched the development of the new Anti-Corruption Strategy and its Action Plan, it invited CSOs to provide their proposals, but received very limited suggestions.

The Ministry prepared and published on-line the first draft of the Strategy, it organized a series of public discussion and received 91 comments. On this basis, the Ministry redrafted 90% of the original documents and published them for the second round of public consultations.

Public discussions of the second draft included more than 10 public discussions in the capital and in the regions, 2 discussions in the multi-stakeholder Anti-Corruption Council and with international partners.

Overall, public consultations lasted for more than 1.5 year. The Government provided feedback to all recommendations. For instance, the feedback on recommendations submitted through the e-draft platform is publicly available and the Ministry has provided justifications for each recommendation/comment that was not taken on board, as well as note for each recommendation that was addressed in the draft. The summaries on recommendations, provided by state bodies as well as the ones provided by NGOs, are also being made publicly available.

As a result, the Anti-Corruption Strategy and its Action Plan were adopted by the Government on 3 October, 2019.

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

About 60% of measures, planned under the Anti-Corruption Strategy in 2020, were implemented, which complies with the lowest benchmark. The Strategy has a budget estimate – albeit limited – but there is no annual financial report on its implementation that could confirm government's assurance that lack of funding was not the reason for poor implementation. While there are objective reasons, such as the COVID-19 and the war that have slowed down anti-corruption work, this rate cannot be satisfactory for the government that came to power on anti-corruption agenda. The civil society also expressed its dissatisfaction with the low rate of implementation.

Benchmark 1.3.1.

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

At least 80% = 6 points

At least 60% = 3 points

In the answers to the questionnaire provided before the virtual monitoring visit of Armenia, the Ministry of Justice reported that, during 2020, 45% measures foreseen in the Anti-Corruption Strategy were fully implemented, 25.5% largely implemented and 29,5% partly implemented. These figures were provided in February 2021 in the report that was prepared by the Ministry for the review by the Anti-Corruption Council.

After the virtual visit in June 2021, the Ministry of Justice provided updated information about the implementation rate of the Strategy in 2020. It explained that some of the actions that were implemented, were not fully reflected in the previous report due to the slowdown in reporting by state bodies during the COVID-19 restrictions period and following the impact of 44 days war. The updated figures include the following: implemented - 62%, largely implemented - 13% and partly implemented - 25% of actions.

It is a relatively good result taking into account the impact of COVID-19 in the combination with the martial law that prevented normal functioning of state bodies. However, this result is not sufficient for the country that has recently had an important change of power, where the society suffers from major divisions and polarisation, and the expectations of the public are high regarding the anti-corruption agenda of the new government. To ensure sustainability of anti-corruption reforms and building on the results of the recent elections, the government must pursue full implementation of its anti-corruption strategy with vigour and persistence.

Benchmark 1.3.2.

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

The Anti-Corruption Strategy and its Action Plan foresee the studies of public perception. More specifically, Measure 48 of the Action Plan includes: “Conducting among citizens regular surveys on corruption, levels of public trust and impact from the implementation of anti-corruption measures; publication of the results of the surveys”. Public assessment of the implementation of the Strategy in 2020 was not conducted. The civil society representatives interviewed during the virtual visit to Armenia, noted that it is impossible to assess the perception among the main stakeholders regarding the implementation of the Strategy, because surveys, focus group discussions or in-depth interviews were not conducted, as confirmed by the 2020 Monitoring Report prepared by the government.

According to the civil society representatives interviewed during the virtual visit to Armenia, the Anti-Corruption Strategy was not properly implemented in 2020. The civil society quoted the Monitoring Report prepared by the Ministry of Justice, which said that expected results for 2020 were reached only for 19 out of the mentioned above 48 measures. They also referred to the methodological difficulties in assessing

the level of implementation of the Strategy, where some measures are expected to be implemented every year, others over a two-year period. They further noted that the focus of the Government is on the formal implementation of the measures foreseen by the Action Plan, such as adoption of legislation, conducting trainings, studying international best practices. It is therefore difficult to relate the implementation of measure foreseen by the Action Plan to the achievement of the goals and objectives of the Strategy, such as those established by the impact indicators (see benchmark 1.5.2.).

To sum up, stakeholders interviewed during the virtual visit to Armenia were critical about practical steps so far, and much hope is put in the future. The strategy foresees the study of public perception, the results of which are not yet available.

Benchmark 1.3.3.

The policy has its estimated budget

The estimated budget of the Anti-Corruption Strategy is provided in Appendix 3 of the Government Decision "On Approving Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022". The total estimated budget is 16 528 040 400 AMD (approximately 33 525 445 USD). This estimate is included in the annual budget of the Ministry of Justice, which consists of individual programmes, such as programmes for the creation of the Anti-Corruption Committee with the budget around AMD 3.9 bln and Anti-Corruption Court with AMD 4.5 bln. The expenses are then included into the total budget of the Ministry of Justice that is sent to the Ministry of Finance for enclosure to the total state budget, which is sent for the approval and acceptance by the Parliament.

The annual budget developed by the Ministry of Justice also includes all operational and personnel expenses of the Anti-Corruption Policy Development and Monitoring Department necessary for the implementation of their part of the Strategy. Other ministries and state bodies have to plan their own anti-corruption budgets through the same exercise, e.g. the Corruption Prevention Commission has its own budget of AMD 3.3 bln within the state budget. Information about expenses for anti-corruption activities implemented by all state bodies becomes available in the annual state budget report per individual agencies.

In addition to the state funding, donors provide support to anti-corruption measures. According to the Ministry of Justice, this support is provided through budget support, where the above mentioned process is applied to fund the Strategy, and through specific technical assistance programmes, where donors provide expertise and cover expenses themselves. For example, the Council of Europe is providing support for the improvement of corruption prevention and asset recovery mechanisms. The US/INL and IDLO are assisting with the actions devoted to the development of asset recovery mechanisms and actions for the establishment of the Anti-Corruption Committee. The UNDP is assisting with the development of monitoring and evaluation methodology, providing support for the establishment of the online tools for the monitoring and evaluation. Donor support is well coordinated, as demonstrated by the donor matrix provided by the Ministry of Justice.

The effort to develop the total budget for the Strategy as well as specific costing for the actions is commendable. It would be easier to monitor the implementation of actions if the costing per action was provided in the Action Plan itself, instead of the general reference to the 'Sources of funding not prohibited by legislation' and if the budget implementation report was presented in the same format. It will also be

important in the future to include information about donor funding that is expected to support Strategy implementation.

Benchmark 1.3.4.

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

According to the responses of the government to the monitoring questionnaire, “While some actions were not fully implemented, none of these was due to lack of funding. The full implementation of many actions was hindered by the state of emergency due to the COVID-19 pandemic and because of the 44 days war, which required the Government to review its overall priorities, e.g. sessions of Anti-Corruption council were not held in the 4th trimester of 2020 because of the war.” The Ministry of Justice explained that some of its operational costs planned for 2020 were not used due to the pandemic and will be moved to 2021.

The annual expenditure report for 2020 is available on the website of the Ministry of Finance. The expenditure of the Ministry of Justice related to the anti-corruption policy are presented in the 868-909 Appendix of RA Parliament decision AJO-002N “On Approving the 2020 Budget Implementation rReport”, according to which in 2020 totally 17 815 000 000 AMD was requested , out of which 17 000 000 000 AMD (budget estimate: 16 528 040 400 AMD) was used for the purpose of implementation of the Anti-Corruption Strategy.

This report provides information about implementation of the anti-corruption budgets of the Ministry of Justice and other state bodies separately, and not the overall picture of costs that were implemented for all measures of the Anti-Corruption Strategy that should be implemented by all responsible state bodies.

The civil society confirmed that the 2020 Monitoring Report, which analyzed the implementation of each measure, including the obstacles for full implementation, never referred to lack of funds as an obstacle. However, it referred to “circumstances conditioned by state of emergency and martial law”. In both cases, the Government redistributed large amounts of funds from many budget programs to public health and defense. However, as the 2020 state budget report demonstrated, the re-distribution did not affect anti-corruption expenditures.

Box 1.2. Budget for the Anti-Corruption Strategy.

Armenia is one of the few countries among the Istanbul Action Plan members that has developed a budget for its Anti-Corruption Strategy and Action Plan, which is key to ensure its effective implementation.

The estimated budget is included into the Strategy as an Annex. The estimate is approximately 33 525 445 USD. It was prepared by the Ministry of Justice based on the estimates of specific costs of individual programmes, such as programmes for the creation of the Anti-Corruption Committee with the budget around AMD 3.9 bln , Anti-Corruption Court with AMD 4.5 bln. The annual budget of the Ministry of Justice also includes all operational and personnel expenses of the Anti-Corruption Policy Development and Monitoring Department necessary for the implementation of their part of the Strategy. Other ministries and state bodies plan their own anti-corruption budgets, e.g. the Corruption Prevention Commission has its own budget of AMD 3.3 bln.

The estimates of anti-corruption activities are included into the budgets of the responsible state bodies, then consolidated into the total state budget and submitted for the approval by the Parliament.

In addition to the state funding, donors provide support to anti-corruption measures. According to the Ministry of Justice this support is provided through budget support, where the above mentioned process is applied to fund the Strategy, and through specific technical assistance programmes, where donors provide expertise and cover expenses themselves. Donor support is well coordinated using a matrix that is managed by the Ministry of Justice.

While the process of developing the budget of anti-corruption strategy is an example of good practice, the process of monitoring of budget implementation is legging behind. Information about all expenses for anti-corruption activities, implemented by all state bodies, becomes available in the annual state budget report per individual agencies. It would be easier to monitor the implementation of actions if the costing per action is provided in the Action Plan itself, and if the budget implementation report is presented in the same format. It will also be important in the future to include information about donor funding that is expected to support Strategy implementation.

Indicator 1.4. Coordination and support to implementation is ensured

Assessment of compliance

The coordination and monitoring of anti-corruption strategy have been improved by re-launching the Anti-Corruption Council that includes CSOs and by establishing its permanent secretariat - Department of Anti-Corruption Policy Development and Monitoring of the Ministry of Justice. The focal points that were already established in implementing agencies under the previous strategy play an important role in the reporting about strategy implementation to the Ministry of Justice. However, it is necessary to improve their role in the coordinating and leading anti-corruption inside their institutions. They need methodological and training support.

Benchmark 1.4.1.

Coordination and monitoring functions are assigned to dedicated staff (secretariat) with necessary powers and resources at the central level and carried out in practice

As it was recommended by the ACN in the previous round of monitoring of Armenia, the Anti-Corruption Program's Monitoring Department of the Prime Minister's Office has been dissolved; its powers and duties were transferred to the Department of Anti-Corruption Policy Development and Monitoring of the Ministry of Justice, created in March 2019. The Department includes two Divisions – for the anti-corruption policy development and for its monitoring. In 2020, it had 9 staff members and 3 experts, which is an increase from 5 staff members in the previous year. The Division for monitoring, which includes three staff members (Head of Division, Chief Specialist, Senior Specialist) as well as three experts, is conducting coordination and monitoring of anti-corruption policy. There is still 1 vacancy in the Division at the time of drafting of this report. Staff and operational resources of the Department are ensured through the state budget, as described above.

The Division has the following tasks: monitoring of the implementation of the Anti-Corruption Strategy, preparing reports and recommendations to the relevant bodies following the results of the monitoring; ensuring cooperation with international organisations, such as the OECD, Council of Europe and UN regarding Armenia's anti-corruption obligations, and organising the activities of the Anti-Corruption Policy Council.

While the tasks of the Department are defined, as above, their powers are not specified, apart from the possibility to issue recommendations to implementing agencies. As an administrative structure of the Ministry of Justice and as the Secretariat of the Anti-Corruption Council, the Department can rely upon their decisions, but their powers over implementing agencies are not explicitly stated. The Ministry of Justice clarified that the Department can rely upon the office of the Prime Minister in his capacity of the Chair of the Anti-Corruption Council to enforce implementation of decisions related to the implementation of the Strategy. The Department can also issue its own formal letters and informal calls to the state bodies concerns. One example of the powers of the Department can be the role that itcan play in the development of the annual monitoring report about the implementation of the Strategy. The 2020 report included a summary table of self-assessments provided by the implementing agencies and the monitoring report finalised by the Department; the comparison of these two tables shows that the Department has downgraded self-assessments in 3 out of 37 cases.

The Anti-Corruption Policy Council was created by the Prime Minister's decision in June 2019. The Council is chaired by the Prime Minister and includes Minister of Justice, Chairperson of the Supreme Judicial Council, Prosecutor General, Chairperson of the Commission for the Prevention of Corruption, Human Rights Defender, Head of the State Supervision Service, representatives from the Parliament, and several representatives of CSOs, including two representing the business sector. The Council considers anti-corruption strategies and related legal acts, sector-specific programmes developed based on the anti-corruption strategies; the implementation of the anti-corruption strategies, including the results of the monitoring; implementation of international commitments and co-operation with international intergovernmental organisations, civil society representatives, organisations representing the business sector, bodies having a role in the implementation of the anti-corruption policy. The Council normally should meet four times a year, and it was supposed to meet in the last quarter of 2020, but this was not possible due to Covid-19 restrictions and the martial law. However, it did meet in February 2021 to review the implementation of the Strategy in 2020, and the report was published.

To ensure coordination and monitoring in practice in 2020, the Monitoring Department has prepared monitoring report for the 1st half of the year, and the evaluation report for the full year. In addition, it provided various consultations, written and oral guidance and advice to the state bodies involved in the implementation of the Strategy. However, it did not provide any trainings and other forms of structured and organised support to the focal points that are responsible for the implementation of the Strategy in state bodies.

Non-governmental partners confirmed that the monitoring department has been active in 2020. However, some have expressed concerns that it does not have enough human resources. As a results the monitoring is carried out in a formal manner, where the execution of coordination and monitoring functions comes down to merely demanding implementation reports from the state bodies responsible for the implementation of particular measures of the Action Plan.

Benchmark 1.4.2.

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

Anti-corruption strategy is implemented by the responsible bodies mentioned in the Appendix 2 of the Anti-corruption strategy for each action. These bodies are also obliged to provide semi-annual and annual reports as envisaged by point 4 of the Anti-Corruption Strategy. Focal points/responsible officers were appointed by states bodies for the coordination and monitoring of implementation already for the previous Anti-Corruption Strategy. After the adoption of the new Strategy for 2019-2022, the Ministry of Justice requested all state bodies to update the information regarding focal points/responsible officers; information about the focal points, including their contacts, is publicly available.[5] In practice, higher level officials, like Deputy Ministers, are assigned to these functions, and the implementation of specific tasks, like preparation of the monitoring reports, is delegated to the operational level officials, such as heads of legal departments or chiefs of staff.

Non-governmental organisations were aware of the reporting by the focal points about the implementation of the strategy; but they pointed out that the focal points are not visible to the society as anti-corruption leaders in a given sector or state body and little is known about their activities to broader public. Indeed, during the virtual visit, the monitoring experts noted that, while in some ministries focal points were well aware of the overall anti-corruption activities in their organisations, like in the Ministry of Education, in others they were mostly busy reporting to the Ministry of Justice, but not actually coordinating internal anti-corruption activities of their organisations.

In case of non-compliance by focal points regarding their obligations under the Anti-Corruption Strategy, the Ministry of Justice has the right to apply to the Prime Minister and ask for his instructions for respective responsible state bodies. The instructions of the Prime Minister are obligatory for them. However, to date there was no need to use this enforcement mechanism.

[5] Commission on the Prevention of Corruption of Armenia, An Important Announcement (12.06.2020)

To sum up, in several state bodies the focal points coordinate and report on anti-corruption activities, while in others their activities focus on reporting only.

TI Armenia currently finalizes a study on the establishment of ethics commissions, appointment of integrity officers and whistleblowing officers throughout the state institutions and largest local government bodies. The findings of this study may be useful to strengthen the implementation of anti-corruption policy in the implementing agencies.

Benchmark 1.4.3.

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

As noted above, the Ministry of Justice is currently developing the methodology for corruption risk assessment. When ready, it will be applied in all state bodies. No other methodological guidance has been provided to the implementing agencies in 2020.

For coordination of the implementation of the Anti-Corruption Strategy, the Anti-Corruption Department of the Ministry of Justice has daily contact with the focal points, provides assistance on any matter regarding the implementation of the strategy and preparing reports. The Ministry of Justice has a mailing list with some 20 addresses of their contact points/implementing bodies that it uses for regular communications.

According to Measure 28 of the Anti-Corruption Strategy 2015-2018, the focal points should regularly receive training by the central body responsible for anti-corruption policy, i.e. the Ministry of Justice. Implementation of such trainings was conducted in the past, but no further training was planned under the Anti-Corruption Strategy for 2019-2022. Instead, Action 5 of the current Strategy envisages trainings for the officials who develop anti-corruption policy; several trainings were organised in 2020 for the relevant staff of the MOJ, PGO and CPC. To ensure effective implementation of the current Strategy, it is important to provide a systematic and specific training to the focal points.

Box 1.3. Policy coordination

Armenia has created a good institutional system for coordinating the Anti-Corruption Strategy and Action Plan. It consists of the political level council, chaired by the Prime Minister with the participation of Minister of Justice, Chairperson of the Supreme Judicial Council, Prosecutor General, Chairperson of the Commission for the Prevention of Corruption, Human Rights Defender, Head of the State Supervision Service, representatives from the Parliament, several representatives of CSOs, including two representing the business sector. The council is supported by technical secretariat that is based in the Department of Anti-Corruption Policy Development and Monitoring of the Ministry of Justice, and includes two Divisions – one for anti-corruption policy development and the other one for its monitoring (with 9 staff members and 3 experts). The focal points in line ministries complete this institutional system. The focal points were established in implementing agencies already under the previous strategy and continue to play an important role in the reporting about Strategy implementation to the Ministry of Justice. However, it is necessary to improve their role in the coordinating and leading anti-corruption inside their institutions, and provide them with methodological and training support. To further improve this institutional system, Armenia may need to consider how to enhance the involvement of the CSOs in the coordination of the Strategy's implementation and in its monitoring.

Indicator 1.5. Regular monitoring and evaluation is ensured

Assessment of compliance

Implementing agencies report to the Ministry of Justice twice per year about their activities based on outcome indicators. The Ministry of Justice prepares a report – where it can downgrade self-reports by the agencies – and presents it to the meetings of Anti-Corruption Council. These reports do not include information about budget implementation. The monitoring methodology also provides for the possibility for CSOs to provide their inputs to the monitoring process, however, they did not contribute in 2020. It is foreseen that evaluation report that will be developed upon the completion of the current strategy will be based on impact indicators. However, impact indicators provided in the strategy, such as TI indexes, are difficult to link directly to the impact of the strategy.

Benchmark 1.5.1.

Regular monitoring reports based on outcome indicators are published online

The methodology for monitoring of the Anti-Corruption Strategy provides that self-assessment reports are prepared twice a year by state bodies. These reports must be published on the web site of the Anti-Corruption Council and of the Ministry of Justice.

The methodology also provides that at the end of each year the Ministry of Justice prepares its assessment of the Strategy implementation for consideration by the Anti-Corruption Policy Council. These reports should be based on outcome indicators and published online.

Finally, the methodology provides that the civil society may carry out their own monitoring and assessment and submit their results to the Ministry of Justice, on semi-annual basis. The Strategy itself includes an action to build capacity of civil society to monitor its implementation.

Regarding the activities to implement the Anti-Corruption Strategy in 2020, the following reports were produced and published online: self-assessment reports by the state bodies for the 1st and 2nd halves of 2020 and the evaluation report prepared by the Monitoring Department for the whole 2020. The monitoring report for the first half of 2020 was discussed by the Anti-Corruption Policy Council at its meeting on July 3, 2020[6] .While the meeting of the Council did not take place at the end of 2020 due to Covid-19 restrictions, it was discussed at the meeting of the Council in February 2021.

The Ministry of Justice provided the following examples of outcome indicators that were used in the annual evaluation for 2020:

- The Commission for the Prevention of Corruption has been formed. (Basic: in 2018 — 0, in 2022 —1) In 2020, the Commission had sufficient facility and material conditions, at least 70% of the staff of the Commission was formed, a separate line for the funding of the CPC has been provided for in the draft Budget and the MTEF (2019); the legislative ground for submitting the draft Budget by the CPC and the report on the enforcement thereof to the National Assembly has been ensured (2020). The State Budget of the Republic of Armenia provides for a separate line designed for the funding of the Commission. (Action 1);
- A package of recommendations aimed at the establishment of a department within General Prosecutor's Office of the Republic of Armenia, carrying out supervision over investigation of corruption-related crimes, has been elaborated (Action 4).

Regarding the indicators, non-governmental partners noted that about one third of activities that were evaluated for 2020 did not have established indicators, and many indicators targeted the development of legal acts or methodologies, conduct of studies or meetings as outputs. Only few actions had indicators of tangible changes, like the indicator for actions 1 and 4. While it is normal that outcome indicators include the development of legal acts and methodologies, this note from the civil society should be taken seriously by the government as a challenge for the future, when they will need to report to the society about the results produced by the Anti-Corruption Strategy.

Benchmark 1.5.2.

Evaluation reports based on impact indicators are published online

It is foreseen that upon completion of the current Anti-Corruption Strategy and its Action Plan, the Ministry of Justice will develop a final evaluation report to assess the results achieved during 2019-2022 and the effectiveness of activities for solving the problems and realising the objectives stipulated by the Strategy, and identify the existing problems, gaps and challenges. The final evaluation report shall be developed taking into account the interim results recorded by the monitoring and evaluation reports during the

[6] See news story about the meeting at the Prime Minister website

reporting years, evaluation reports and recommendations by international organisations, results of surveys conducted, international researches and indexes.

The Anti-Corruption Strategy includes several impact indicators that will be used for the evaluation of the impact of its implementation, including the following:

- World Bank, Good Governance Indicators, baseline in 2017 - 44.23, target for 2022 - 10% growth;
- Caucasus Barometer, base line in 2017 - 20, target for 2022 - 20-30% growth;
- Transparency International, Corruption Perceptions Index, baseline in 2018 - 35, target for 2022 – 55.

It is commendable that the impact indicators are provided in the Strategy. However, it will be difficult – if not impossible - to relate activities implemented under the Strategy to these high level international indicators. While the international indicators are important to compare the overall countries' levels of corruption perception and practices, governments need additional indicators that can help them measure impact of their actions, like level of awareness and resistance of the citizens and civil servants to corruption, trust in various anti-corruption bodies, corruption experiences in various sectors, and others. Developing such indicators is a challenging task, their use will most likely involve various public surveys.

The Ministry of Justice is already conducting surveys of citizens two or three times per year. They are conducted by a private company, and a part of these surveys is dedicated to corruption. The results of these surveys are not used in the annual evaluation reports. However, it is expected that they will be used for the final evaluation of the Strategy implementation, together with the findings of studies that will be conducted by the civil society and evaluations by international partner organisations. Developing impact indicators that can demonstrate positive change and collective relevant data appear an urgent task for Armenia.

Benchmark 1.5.3.

Reports include information about budget spent

The reports about the implementation of the Anti-Corruption Strategy do not include information about the budget spent: this information is included in the Government expenditures report submitted to the Parliament. Information about budget implementation in 2020 was under preparation at the time of drafting of this assessment; the draft is available at http://parliament.am/drafts.php?sel=showdraft&DraftID=62296 in Armenian only.

Donor funding for anti-corruption activities is provided in the form of budget support or direct programmes. Budget support funding is reflected in the Government expenditures report. Funding under direct programmes is provided bilaterally, there is no procedure at the moment to include this information to the reports about the implementation of the Strategy.

According to the Ministry of Justice, the planned budget for operational activities of the Anti-Corruption Department of Ministry of Justice for 2020 is AMD 12 510 000, which is approximately USD 24 291. This funding includes organizations of capacity building actions for focal points and NGOs. However, these funds were not fully used in 2020, as all the trainings and other activities were conducted online because of the existing restrictions of Covi-19 pandemic. These funds will be re-allocated for activities in 2021-2022.

While it is positive that information about budget spent for anti-corruption activities is included into the Government expenditures report and is publicly available, this form of reporting is not convenient to track progress in implementation of the Strategy, above all for the civil society and for the donors.

Benchmark 1.5.4.

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

As noted under benchmark1.5.1., the methodology for monitoring the Anti-Corruption Strategy provides that the civil society may carry out its own monitoring and assessment and submit their results to the Ministry of Justice, on semi-annual basis. Besides, seven CSOs are selected to the Anti-Corruption Council through an open competition, and thus have a possibility to contribute to the monitoring of Strategy implementation.

According to the answers to the monitoring questionnaire provided by the government, the CSOs are involved in monitoring process. After the publication of the semi-annual report, CSOs request additional information regarding performed activities, based on which they are preparing independent evaluation report. This report is being discussed with involvement of wide range of NGOs and state representatives, including Transparency international, Armenian Lawyers Association, Freedom of Information, Union of Informed Citizens, Protection of Rights without Borders, Helsinki Citizens' Assembly-Vanadzor.

Civil society groups, interviewed by the monitoring team confirmed, that for the first time current Anti-Corruption Strategy explicitly requires the submission of the Strategy and its Action Plan, monitoring and evaluation report to the Anti-Corruption Policy Council, which includes representatives of CSOs and business associations. While the CSOs agreed that this provides them with the possibility to take part in the monitoring as full-fledged members of the Council, they argued that the Government was not pro-active in involving CSOs and other stakeholders in the monitoring. Indeed, the ambitions of the Strategy and its Action Plan to build CSOs capacity to take part in the monitoring work that was planned for 2020 were not implemented due to COVID-19 restrictions.

Benchmark 1.5.5.

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

As noted under benchmark 1.5.4., the Monitoring Methodology provides for the possibility for CSOs to submit their views regarding the semi-annual self-assessments by state bodies. In addition, the Methodology also envisages that annual evaluation report should consider alternative reports, prepared by CSOs.

The Ministry of Justice noted that it invited CSOs to provide their inputs to the 2020 independent evaluation, but only one CSO expressed interest. The CSO submitted itsown report about the implementation of the Strategy in 2020 only in May 2021. It was therefore not possibly to use these inputs during the review of the Strategy implementation by the Anti-Corruption Council in February 2021.

To improve the situation in the future, the government suggested that it might be better if CSOs conducted alternative evaluation reports prior to the monitoring report prepared by the Ministry of Justice, so that this report could include also a part related to the independent reports. To this end, a draft on making amendments to the Anti-Corruption Strategy was prepared and presented to public discussion. According to the Draft, the deadline for publication of monitoring and evaluation report has been extended up to 1 month, enabling civil society organisations to present their alternative reports and to make suggestions regarding the draft report prepared by the Ministry of Justice.

The monitoring team would like to encourage both the Government to insist more and to provide support to the CSOs to contribute to the monitoring of the strategy, and the CSOs to actively use the possibility to take part in this process.

Benchmark 1.5.6.

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

While preparing the monitoring reports, the Monitoring Department of the Ministry of Justice is using all databases that are available for the state bodies, including E-draft, declaration system, online whistleblowing platform, and other systems that could contain information on the level of implementation of the Action Plan. The Department also insured functioning of the Anti-Corruption Monitoring Platform (https://anti-corruption.gov.am/am/). This online Data Tracking System allows the public to follow the implementation of the Anti-Corruption Strategy and its Action Plan, provides information regarding activities of the Anti-Corruption Council, independent/alternative reviews of anti-corruption policy by the civil society and international organisations. The online platform provides an opportunity to the citizens to raise their questions and concerns regarding the implementation of specific measures set out in the sectoral action plan, as well as the violations found. The System allows directing these queries by citizens to the relevant official of the state governing body in connection, who is in charge of the entire inquiry process.

While the above practice is positive, it does not address the meaning of this benchmark that is suggesting the use of IT tools specifically for collecting and processing data related to the monitoring and evaluation of the implementation of the Anti-Corruption Strategy. The underlying reason for this benchmark is to encourage anti-corruption policy makers to move away from paper-based processes that involve preparation of multiple reports by various bodies, collection and processing various documents, compiling and publishing them. Introduction of IT tools and solutions can save a lot of time and make the transfer of information easy.

2 Conflict of Interest

In March 2018, Armenia adopted the new versions of two laws laying down integrity principles and standards for the civil service – the Law on Civil Service and the Law on Public Service. The new laws considerably improved the conflict-of-interest framework for public officials. The laws are a major step forward, although shortcomings remain. For example, the law provides narrow ranges of methods for conflict-of-interest resolution and the Corruption Prevention Commission currently lacks dedicated staff to administer a highly decentralized system with a unified methodological and administration principles. There was a delay in establishing the CPC, but it finally became operational in 2019, its human resources need to be further strengthened. It showed good effort in addressing public allegations about COI of high-level officials, but no dissuasive sanctions have been applied yet due to loopholes in legislation. No statistics is yet available on implementation of COI rules and other restrictions. According to civil society representatives, information about implementation of individual recommendations/instructions, issued by the CPC regarding COI resolutions, is not sufficiently accessible, and the track record of implementation of sanctions is low, in part, because the CPC and other integrity functions do not compile sufficient enforcement data.

Indicator 2.1. Legal and institutional framework on conflict of interests is in place

Background

Clear and proportionate procedures for managing conflict of interest, embedded in the legal framework, are crucial for the effective prevention and management of conflicts of interests. At the outset, the definition of a “conflict of interest” is essential to understanding the issue and how to identify, manage and resolve it. Effective implementation also relies on public officials, knowing when and how to identify a potential or real conflict of interest, and how to resolve it.

Assessment of compliance

The Law on Public Service assigns the responsibilities for preventing and managing conflict of interests to the public official himself or herself, to his or her supervisor and to the Corruption Prevention Commission, and distinguishes public officials with supervisors from public officials with no supervisors. The law provides narrow ranges of methods for conflict-of-interest resolution. There are special COI regulations targeting judges, prosecutors, MPs, members of government, members of local, regional councils, though a detailed definition of what constitutes a conflict of interest is often lacking. The functions of policy development, oversight of the implementation of COI regulations, including the application of sanctions, methodological guidance and individual counselling are assigned to the Corruption Prevention Commission, Ethics Commissions and integrity officers, though the CPC lacks dedicated staff to administer such a highly decentralised system with a unified methodological and administration principles.

Benchmark 2.1.1.

The law assigns roles and responsibilities for preventing and managing conflict of interests (COI) including the duty to report, duty to abstain from decision-making and duty to resolve COI

Article 33 of Law on Public Service from 2018 assigns the responsibilities for preventing and managing conflict of interests to the public official himself or herself, to his or her supervisor, and to the Corruption Prevention Commission.

The Law on Public Service assigns to public servants, who have supervisors, the duty to report and the duty to abstain from decision-making in a conflict of interest situation. The Law further assigns the duty to resolve the conflict of interest situations to the supervisors. More specifically, Article 33, parts 5-11 provide that a person holding a position must avoid performing actions that lead to a conflict of interest and must refrain from performing an action or adopting a decision in a situation of conflict of interest. Where performance of an action or adoption of a decision by or with the participation of a person, holding a position within the scope of his or her powers, can lead to a conflict of interest, the person holding the position shall be obliged to submit a written statement on the circumstances related to the conflict of interest to his/her superior or immediate supervisor. Such statement shall be subject to immediate consideration. Before obtaining a written consent from the superior or immediate supervisor, said person must refrain from performing any action or making any decision with regard to the matter concerned. The superior shall take steps or suggest taking steps to resolve the situation.

The Law does not require public officials who do not have supervisors – such as persons holding state positions, positions of a head or deputy head of a community, head or deputy head of an administrative district of the community of Yerevan – to abstain from decision-making in conflict of interest situation, but only to report about this situation to the Commission for Corruption Prevention, which shall suggest taking steps to resolve the situation (art. 33.6 of the PSL). Such steps include making a statement on the presence of conflict of interests or its absence. The opinion shall be published on the official website of the Commission. A person not having a superior shall be obliged to submit a public clarification for this situation, which shall also be published on the website of the body in which the person in question holds office. Performing an action or making a decision in a situation of conflict of interest shall entail disciplinary action. Provisions on disciplinary action shall not apply to persons holding political positions.

Articles 45 and 46 of this Law also empower ethics commissions and integrity officers in state and local self-governance bodies to resolve conflict of interests situations. The ethics commissions have the following duties: (i) examine and solve applications in regard to violations of incompatibility provisions, other limitations, rules of conduct by public servants and applications in regard to situational conflict of interest incidents; (ii) present recommendations to an authorized body or official in regard to prevention and elimination of violations of incompatibility provisions, other limitations, rules of conduct by public servants, and prevention and elimination of conflict of interest situations. Integrity officers are authorised to provide professional consultancy to public servants on incompatibility provisions, other limitations, rules of conduct, and present recommendations on measures to resolve conflict of interest situations.

Benchmark 2.1.2.

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

The Law on Public Service, mentioned under benchmark 2.1.2., provides a narrow range of methods to manage the COI. As noted above, it is the public official who has the responsibility to avoid a conflict of interest situation and abstain from acting when in such situation, and must request guidance from the supervisor – or the Commission for Corruption Prevention for public officials with no supervisors – in written form. The Law says that the supervisor must take steps to resolve the COI situation, but it does not provide any further procedures regarding the methods that can be used.

Benchmark 2.1.3.

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

The definition of the COI, as provided in part 1 of article 33 of the Law on Public Service, is narrow and does not align with the OECD Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service.[7]

First, it does not include apparent or potential conflicts of interests, although Part 4 of article 33 makes it explicit that there is no conflict of interest "if the personal interests have a seeming effect on the proper exercise of the powers of a person holding a position, with such effect being absent in reality" (apparent). Similarly, Part 5 of article 33 stipulates that "where performance of an action or adoption of a decision by or with the participation of a person holding a position within the scope of his or her powers can lead to a conflict of interest, the person holding the position shall be obliged to submit a written statement on the circumstances related to the conflict of interest to his or her superior or immediate supervisor" (potential). Comprehensively defining conflict of interest could include a general description of situations and activities that can lead to actual, apparent, and potential conflicts.

Second, the Law provides a definition of private interests limited to the improvement of property and legal status of persons involved. All situations covered by the law require an actual outcome. The range of private interests is considered only in regard to affiliated persons and the definition of the "affiliated persons" is also narrow. It includes "the spouse of the person holding a position, the children (including adopted children), parents (including adopters), sisters, brothers, grandfathers, grandmothers, grandchildren, aunts, uncles, children of the sisters and brothers of the person holding a position or those of his or her spouse, the children of the aunts and uncles of the person holding a position, the spouses of the sisters, brothers and children of the person holding a position". The Law includes broad and ill-defined

[7] OECD (2003), Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service.

exemptions, like cases that apply universally and to a wide range of persons (Part 3 of Article 33). As such, key situations that may lead to a COI may not be covered or fall into a grey area.

The answers to the monitoring questionnaire and meetings with the Corruption Prevention Commission confirm that the government shares this assessment: "Thus, the current regulations of the Law on Public Service do not provide grounds for perceived conflict of interest, such as when it appears that a public official's private interests could improperly influence the performance of their duties, but this is not in fact the case or for potential conflict of interest: where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future. All situations covered by the law require an actual outcome."

The government provided a case demonstrating the weaknesses of the current COI regulations. The case involved the decision of the Ministry of Health to provide a contract to the company where the wife of the Minister was a director, and where the value of the contract increased from AMD 22 mln in 2018 to AMD 66 mln in 2020[8]. The position of the director in a company is not covered by the COI regulations, and it was almost impossible to prove that there was a link between the decision of the Ministry that awarded overpriced contract and increased wealth of Minister's wife, and that the wife of the Minister benefited because of the position of the Minister due to the chain of decision-making hierarchy in the Ministry. In the answers to the monitoring questionnaire, the Government acknowledged the above shortcomings and noted that that the Anti-Corruption Strategy provides for measures to improve the system of COI and other restrictions, including drafting a legislative package in this regards.

Benchmark 2.1.4.

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

Part 7 of article 33 of the Law on Public Service contains provisions on conflict of interest, which are not applicable to deputies of National Assembly, judges, members of Supreme Judicial Council, prosecutors and investigators. Instead, they are regulated by special legal acts.

- **Members of government** are covered by rules of conduct of persons holding state positions specified in Article 33 of the Law on Public Service.
- **Members of local, regional Council**: the current rules on COI contained in the Law on Public Service are applicable to heads of communities, their deputies and heads of administrative districts, as they are considered as holders of political or administrative offices. In regard to members of Councils of Eldermen of communities, point 6, part 2 of article 21 of the latter law stipulates that: "Member of community's Council of Eldermen is obliged (…) to abstain from voting in regard to those decisions of Council of Eldermen, which relate to his/her interests, persons connected to him by close blood relationships or co-in-laws (parent, spouse, son/daughter, brother, sister)".

[8] 04.2020 Legislation is accesible on the website of CPC Armenia

- **Judges, including members of the Judicial Council**: On 7 February 2018 Parliament adopted the Constitutional Law on Judicial Code of the Republic of Armenia, which provides rules on conflicts of interest. Point 7, part 2 of Article 70 of this Code (article is titled as "Rules of Conduct of Judge while acting ex officio") stipulates: "While acting officially judge is obliged (…) not to let conflict of interest, exclude any impact of family, societal relationships or relationships of another nature, on implementation of his/her official powers". Thus, the definition of conflict of interest, in the case of judges, is stipulated as rule of conduct, not keeping of which results in responsibility. Nevertheless, the Judicial Code does not provide definition of conflict of interest and does not regulate regulation of interests outside of judicial activities of judge.
- **Prosecutors**: the definition of conflict of interest and regulations for prosecutors are enshrined in the Law on Prosecution, in the chapter "Rules of Conduct of Prosecutors". Point 6, part 1 of Article 72 of the Law stipulates that "the prosecutor is obliged to be autonomous and unbiased, be independent from the influence of legislative and executive branches of government and other state bodies and local self-governance bodies, public and political organizations, means of media, private interests, public opinion and other indirect influences, pressures, threats and other interventions, to be free from fear of being criticized". At the same time, in point 10, part 1 of article 73 of the same Law, it is stipulated: "The prosecutor is obliged to manifest impartiality, to abstain by his words or conduct from manifesting biases, discrimination or creating such appearance, to act in a way which will not create unnecessary doubts in regard to his/her impartiality and being unbiased, not to be led by guesses, emotions, personal attitude and other indirect influence, which does not prevent prosecutor to freely express his/her opinion in regard to solutions on issues of service". Similar regulation of conflict of interest is enshrined in regard to relationships of prosecutors outside of official duties. Particularly, point 2 of part 1 of article 74 of the same Law stipulates that prosecutors are obliged "not to allow conflict of interest that his family, societal or relationships of other nature would impact on proper performance of his authorities while acting". However, a detailed definition of conflict of interest is not stipulated in the case of prosecutors.
- **Members of Parliament**: there are general COI provisions targeting MPs included in the Law on Guarantees of Activities of a Deputy of the National Assembly (LoGAD), which covers general ethical principles, incompatibilities, accessory activities and conflicts of interest. The definition of conflict of interest is the same as in the Law on Public Service (Article 4 LoGAD). The Law includes regulations in regard to measures that MPs must undertake in the case of an emerging of conflict of interest. For example, in case a conflict of interest arises, Deputies must make a statement on the conflict of interest prior to any speech or voting at a sitting of the National Assembly or a Committee, in which the Deputy is a member. When making a legislative initiative, the Deputy must also submit, together with relevant documents, a written statement on the conflict of interest, describing the nature of the conflict. Besides, it also stipulates situations of operations in National Assembly during which, activities of deputy will not be regarded or recognized as conflict of interest situations. Nevertheless, there are no sanctions for failing to undertake measures stipulated for conflict of interest situations. The development of a code of ethics for MPs is foreseen under the new Anti-Corruption Strategy.

Benchmark 2.1.5.

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

The Ministry of Justice is responsible for the overall policy development in the area of anti-corruption, including COI regulations. The Corruption Prevention Commission is responsible for the oversight of implementation of these rules in various state bodies and provides methodological guidance and assistance to ethics commissions and integrity officers in those bodies who are responsible for examination of cases and application of sanctions.

The Commission has the function of instituting proceedings in relation to the persons holding state positions (except for Deputies, judges, members of the Supreme Judicial Council, prosecutors and investigators), by heads and deputy heads of communities and administrative districts of Yerevan. The Commission can issue opinions and recommendations for preventing and eliminating violations to the competent body or to the official involved. By part 1 of article 23 of RA Law on Corruption Prevention Commission, the Commission is provided with the following function: “To follow compliance of rules of conduct and situational conflict of interest regulations of persons holding state offices (except for deputies, members of Supreme Judicial Council, prosecutors, investigators), heads of communities, their deputies, heads of administrative districts in Yerevan, their deputies”. By article 27 of the same Law, the same Commission is provided with a function “to conduct proceedings on violations of incompatibility provisions, other limitations, rules of conduct and situational conflict of interest”. For implementation of mentioned functions, the Commission, by article 24 of the same Law, is empowered “to examine and decide on applications regarding situational conflict of interest incidents, present to competent body or official…recommendations on prevention and elimination of conflict of interest situations (including on subjecting person holding office to liability), recommendations to persons holding state offices on undertaking measures for resolution of conflict of interest situations, to run statistics on conflict of interests and publish data, to summarize practice on implementation of provisions on situations of conflict of interests and to present recommendations on securing its uniformity”.

In 2020, the Commission issued 3 methodological documents (all about asset declarations):

- Declaration Guide for Completing the Property, Income and Interests, Property and Income Declarations of Family Members (November 2020);
- Procedure for Submission of Declarations and Change in Declared Data, as well as defining the requirement for supplementing the declaration (November 2020);
- Procedure and form of notification to the Commission for the Prevention of Corruption of the appointment or dismissal of a declaring official in this body by the Secretary General or by a person performing the functions of the Secretary General of a State Body or Local Self-Government Body, and on approval of the procedure for maintaining the register of declarations (June 2020).

This division of functions of prevention and elimination of conflict of interest situations shows that the Corruption Prevention Commission mainly acts as a body for prevention and elimination of situational conflict of interest of persons holding state offices (except for deputies, judges, prosecutors, investigators), heads of communities, their deputies, heads of administrative districts of Yerevan, their deputies. In the case of persons holding public offices and public servants, the Commission is granted only with the power

to run statistics on conflict of interests' incidents and publish them, to summarize practice of implementation of provisions of conflict of interests and to present recommendations for securing their uniformity.

There are 3 staff members of the Corruption Prevention Committee, who are responsible for the proceedings of individual cases of COI violations. They have the right to request information from the person involved in the COI situation, from his or her employing organisation, to review his or her declaration and other information, including information containing bank and insurance secret (there are 5500 public officials who must submit declarations). There are also 6 staff members responsible for methodological guidance and clarifications to other stage bodies. In regard to prevention and administration of conflict of interests, the functions granted to CPC are not enough to administer such a highly decentralized system with a unified methodological and administration principles.

Functions in regard to implementation of conflict of interest regulations of judges, NA deputies, prosecutors, investigators are provided to relevant sectoral ethics commissions, and in regard to Councils of Eldermen in communities regulations are missing. Ethical and disciplinary commissions in state bodies are responsible for the implementation of COI regulations in their institutions. They review individual cases and recommend solutions to the management. The integrity officers are responsible for providing guidance and counselling on individual cases in their state institutions.

Benchmark 2.1.6.

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

The staff of the Corruption Prevention Commission responsible for the proceedings of individual cases and the staff responsible for methodological support and guidance are employed in separate departments.

As noted above, the ethical commissions in state bodies are responsible for reviewing individual cases and recommending sanctions to the management. The integrity officers are responsible for the individual counselling.

Indicator 2.2. Unbiased and vigorous enforcement of regulations is ensured

Background

Clear rules and guidance need to be accompanied by relevant sanctions for when public officials do not effectively manage conflict of interest.

Assessment of compliance

The Corruption Prevention Commission receives allegations of violations of conflict of interest rules or other restrictions. Since 2019, the Commission received 35 allegations, 10 of which fell under its competence. The Commission issued four opinions, one of which required the application of further sanctions. According to civil society representatives, information about implementation of individual recommendations/instructions issued by the central body regarding COI resolution enforcement information is not sufficiently accessible, and the track record of implementation is low, in part because the CPC and other integrity functions do not compile sufficient data on sanctions.

Benchmark 2.2.1.

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

In 2019-2020, the CPC received more than 35 applications/reports on violation of code of conducts, including conflict of interests and incompatibility since November 2019. Out of the 35 reports, 10 fell under its mandate. Out of these applications/reports, the CPC made a decision on four applications, three of which are public resolutions available online. Out of the four opinions, one required the application of further sanctions. Civil society organisations confirmed that the Corruption Prevention Commission for the period of November 26-December 20 of 2019, reacted to all applications lodged with the Commission on violations of Conflict of Interests and limitations by high-ranking officials.

The CPC only started its work, but has shown good record in addressing public allegations of COI among high ranking officials.

Benchmark 2.2.2.

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

- **Members of the public service**: The Law on Public Service foresees a diversified approach in regard to compliance of other limitations, incompatibility provisions and Conflict of Interest situations. According to part 17 of article 31 of the mentioned law: “violation of incompatibility provisions by the side of public servant and a person occupying public office is a ground for termination of powers or resignation from the office”. In regard to other limitations, in parts 3, 5 and 5 of article 32 of the same law is mentioned: “3. Failing to comply with other limitations gives rise to disciplinary responsibility. Provisions in regard to disciplinary responsibility are not exercisable towards persons occupying political offices. Provisions in regard to disciplinary provisions can be exercised toward persons occupying autonomous offices only in cases stipulated by law. 4. Conclusion of the Corruption Prevention Commission on violation of limitation stipulated by this article by a person who does not have superior or immediate supervisor is being posted at the website of the commission during 3 days period. Person who does not have superior or immediate supervisor is obliged to present public explanation in regard to violation mentioned in the conclusion of Corruption Prevention Commission, which shall be posted at the official website of the body where s/he occupies office, during 3 days period after the moment of its receipt. 4. Part 4 of this article is exercisable to a person who occupies political office and who has superior or immediate supervisor.” In parts 9-11 of article 33 of the Law on Public Service, are stipulated exactly the same regulations in regard to situational conflict of interests.
- **Members of Parliament and members of Cabinet:** The Constitutional Law on National Assembly Regulations and the Law on Structure and Operations of RA Government do not foresee any means

of responsibility for violation of other limitations, situational conflict of interest in regard to deputies of NA and members of the cabinet.

- **Members of local, regional Council**: there are no regulations in regard to violations of bans on receipt of gifts, situational conflict of interest stipulated in RA Law on Corruption Prevention Commission, RA Law on Local Self-Governance and RA Law on Public Service in connection with a member of Council of Eldermen and persons occupying municipal offices.
- **Judges and prosecutors**: the Constitutional Law "Judicial Code" and the Law on Prosecution mainly have regulated mechanisms of application of disciplinary responsibility on violations of incompatibility requirements, other limitations, ban on receipt of gifts and violations of situational conflict of interests, in connection with judges and prosecutors. Although, RA Law on Investigative Committee and RA Law on Special Investigative Service prescribe means of disciplinary responsibility for investigators, nevertheless, they are not exercisable in cases of violation of other limitations, ban on receipt of gifts, situational conflict of interest committed by investigators. The legislation does not foresee means of disciplinary responsibility for violations of other limitations, ban on receipt of gifts, situational conflict of interest by the side of officials falling within group of administrative and discretionary posts who occupy public office.
- **Separate groups of public servants (civil, tax, customs, emergency service, penitentiary, mandatory enforcement of judicial acts services):** the legislation fully regulates disciplinary responsibility measures for violations of incompatibility provisions, other limitations, ban on receipt of gifts, situational conflict of interests. Nevertheless, laws regulating community, diplomatic, police, military services and service in the bodies of national security, provide disciplinary responsibility measures, which are not applicable in regard to violations of other limitations, ban on receipt of gifts, situational conflict of interests.

Out of the four decisions of the CPC, the first case involved the of incompatibility of the member of the parliament; the Commission confirmed the violation and submitted its conclusion to the National Parliament, the Council of the Parliament voted for applying to the Constitutional Court to terminate the powers of the public official. The Council of National Assembly, based on the conclusion of the Commission, lodged an application with the Constitutional Court. The latter rejected the lodged application with a reason that the National Assembly failed to keep procedural requirements. Thus, means of responsibility on termination of powers of high-ranking officials have not been exercised. The second case involved a conflict of interest of the Minster of Health, but the CPC did not find a violation of the current legislation due to the limitations of the legislation as noted above. The third case involved the conflict of interest of a judge, where the Commission does not have the mandate, the case was transferred to the Council of Judges. It was noted earlier, that the current legislation does not provide proportionate sanctions for the violation of code of conduct, including conflict of interest and gifts.

According to civil society representatives, information about implementation of individual recommendations/instructions issued by the central body regarding COI resolution enforcement information is not sufficiently accessible. This information is missing from the website of the Corruption Prevention Commission. The three decisions available on the website of Corruption Prevention Commission concern violations of conflict of interest provisions by high-ranking officials during 2020, as specified above. Civil society representatives also stressed that the track record of sanctions imposed for failure to report or resolve COI, for violation of post-employment restrictions including terminated employment contracts, for violation of incompatibilities, for violation of the rules on gifts and hospitality, including confiscated illegal gifts, for serious or repeat violations of COI rules and other anti-corruption restrictions and invalidated decisions/contracts as a result of COI is low. Integrity officers or CPC, state and local self-governance bodies still are not running such statistics.

Benchmark 2.2.3 – 2.2.10

BENCHMARK	Country Data Nov 2019-2020		Score	Level
	Total	Percentage (%)		
2.2.3. Track record of the implemented individual recommendations/instructions issued by the central body regarding COI resolution. *(Number of cases when the central agency/unit provided individual counselling on COI issues) (Number of individual recommendations/instructions issued by the central body regarding COI resolution to other public authorities and, out of these, number of implemented recommendations/instructions.)*	10/35	29%	**No points**	**No points**
BENCHMARK	Total	Per 1 million of population	Score	Level
2.2.4. Track record of sanctions imposed on high-level officials for violations of COI rules or other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions). (Number of sanctions imposed on high-level officials for violations of COI rules (disclosure of COI, not taking measures to resolve COI, etc.). The Commission has issue 4 opinions, out of which 1 requiring further sanction by respective authority.)	41	0.3	**No points**	**No points**
2.2.5. Track record of sanctions imposed for failure to report or resolve COI	0	0	**No points**	**No points**
2.2.6. Track record of sanctions imposed for violation of post-employment restrictions including terminated employment contracts	0	0	**No points**	**No points**
2.2.7. Track record of sanctions imposed for violation of incompatibilities (1 opinion provided by the Commission requiring withdrawal of MP mandate)	1	0.3	**No points**	**No points**
2.2.8. Track record of sanctions imposed for violation of the rules on gifts and hospitality, including confiscated illegal gifts	0	0	**No points**	**No points**

2.2.9. Track record of imposed ban on holding public office for serious or repeat violations of COI rules and other anti-corruption restrictions	0	0	**No points**	**No points**
2.2.10. Track record of invalidated decisions/contracts as a result of COI	0	0	**No points**	**No points**

Indicator 2.3. Information on COI is published

Background

Transparency over conflict of interest management cases strengthens accountability and increases the relevance and credibility for public officials to participate in regulating conflict of interest. Enforcement data and statistics can further ensure accountability and promote risk analysis if they are transparent and accessible to the public.

Assessment of compliance

The Commission for Corruption Prevention publishes opinions on conflict of interest management on its website, though information about gifts reported are not available. The collection of criminal and disciplinary data and statistics related to breaches are the responsibility of integrity officers, their activity is co-ordinated by the CPC. However, detailed enforcement statistics on violations of COI rules and other anti-corruption restrictions are missing and are thus not available online.

Benchmark 2.3.1.

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

According to the Law “On Corruption Prevention Commission”, decisions of the Commission are public. The CPC has published its decisions on the cases of conflict of interest online at http://cpcarmenia.am/hy/decisions/. According to Article of the Law on CPC, the CPC should publish activity reports on a semi-annual basis. However, civil society organisations reported that reports for 2019 and 2020 are missing from the website of the CPC.

Benchmark 2.3.2.

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

The main regulations regarding gifts are prescribed by the Law on Public Service. Article 29 of the Law provides, as a main rule, for a general prohibition of accepting gifts when related to official duties of public officials (including MPs, judges and prosecutors). Article 41 of the Law stipulates that declarants should

present information, inter alia, on property, monetary funds received as a gift or aid (except for those received in the form of work, service) in their income declarations. Where the value of a gift accepted by a person holding a public position or a public servant […] exceeds AMD 60 000, it shall be deemed to be the property of the state or community and shall be registered as such. The law provides for an obligation to report permissible gifts and but the procedure for reporting gifts is yet to be elaborated. The draft Decision of the Government on Approving the Procedure for Record-Registration and handing of the Gifts Received by Persons Holding Public Positions and Public Servants is currently being elaborated.

Benchmark 2.3.3.

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

Detailed enforcement statistics are missing. According to the Law on Public Service, Integrity Officers are responsible for running statistics on violations of incompatibility provisions, other limitations, and rules of conduct and conflict of interests by public servants. According to RA Law on Corruption Prevention Commission, the latter runs statistics on violations of incompatibility provisions and other limitations, rules of conduct and conflict of interest and publishes data.

3 Asset and Interest Disclosure

Armenia strengthened the implementation of asset and interest disclosure mechanisms for certain categories of elected and non-elected public officials, including ministers, MPs, judges and prosecutors, through the adoption of the Law on the Public Service in 2018 and Decision No. 102-N of 30 January 2020, establishing the sample forms of declarations of property, incomes, interests and expenses.

Overall, Armenia provides for a tailored identification of categories of public officials submitting such declarations, clearly defines coverage of the information disclosed, and enables public availability of non-confidential information. Nevertheless, there are still some gaps, e.g. a limited number of PEPs (members of the management or supervisory bodies of SOEs) are not covered by declarations regime.

The Corruption Prevention Commission is tasked with analysing and publishing the declarations, maintaining the register of declarations, detecting conflicts of interests, investigating integrity violations and imposing administrative sanctions. Several shortcomings remain, such as the lack of technical staff and the absence of an automated risk-based analysis of declarations. The CPC is currently developing a new e-register that is expected to address these shortcomings.

Civil society representatives also raised concerns regarding political bias in setting up the Corruption Prevention Commission.

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

Background

In 2018, Armenia adopted the Law on Public Service, which defines the categories of public officials that are required to disclose their assets and interests. Given the high expectations that political and management leaders will serve the public interest, it follows that the legal framework on asset and interest disclosures applies to politically exposed positions and responsibilities, high-ranking officials, as well as other public officials with at-risk positions.

Assessment of compliance

While the Law on Public Service covers a broad range of categories of public officials required to submit declarations, including high-ranking elected and non-elected officials, certain at-risk positions are not covered by the requirement. This includes top executives of state-owed organisations, as well as certain officials responsible for public procurement.

Benchmark 3.1.1.

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

Article 34 of the Law on Public Service defines categories of public officials required to submit declarations ("declarant officials"). The President, members of Parliament, members of Government and their deputies, heads of executive authorities and their deputies, the staff or private offices of political officials (such as advisors), regional governors, and mayors are all required to submit declarations. This requirement also covers their family members, including those residing with the public official. A majority of public officials defined as Politically Exposed Persons (PEPs) under the Law on Combating Money Laundering and Terrorism Financing (2008) are declarant officials (Head of State, Heads of Government, Ministers and Deputy Ministers; Members of Parliament; Members of the Supreme Court and the Constitutional Court or any other high level court whose decisions are not subject to appeal; members of the court of Auditors or of the Board of the Central Bank; ambassadors, high-level military officers, prominent members of political parties). On December 29, 2020, amendments were made to the Constitutional Law on Parties, which established an obligation for party officials to submit property and income declarations. In particular, the members of the party's permanent governing body must submit a declaration of their property and income to the Corruption Prevention Commission.

However, members of management or supervisory bodies of state-owed organisations, considered as PEPs under the law, are not required to file declarations. Submitted declarations are available in Armenian at http://cpcarmenia.am/hy/declarations-registry/.

Benchmark 3.1.2.

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

All officials, defined in Article 34 of the Law on Public Service, and their family members, including those residing with the public official, are "declarant officials". Thus, declarant officials include judges, prosecutors, members of the judicial and prosecutorial governance bodies, anti-corruption investigators, officials and members or board members of independent regulators and supervisory authorities. However, the requirement does not apply to top executive of SOEs. Similarly, the requirement may not apply to all officials responsible for public procurement. The law applies to Secretary Generals (chiefs of staff) of public organisations, who have the responsibility to supervise public procurement activities, but the monitoring guide specifies that "officials responsible for public procurement" mean public officials who are members of the procurement committees/boards, procurement review body or participate in the procurement-related decision-making in other capacity.

Indicator 3.2. Asset and interest disclosure is comprehensive and regular

Background

Asset and interest disclosures are instrumental in the detection of financial and non-financial interests that may affect the decisions of public officials. As such, the disclosure provisions specified in the Law on Public Service cover both financial and non-financial assets and interests that public officials hold, including real assets and personal properties, financial assets and investments, securities and stocks, trusts, income, liabilities, memberships, positions and outside activities as well as government contracts. Armenia also requested that public officials declare expenses and transactions while in functions, and activities, as well as information on the assets and income of family members.

Assessment of compliance

The asset and interest disclosure is comprehensive and includes information on the assets and income of family members. Moreover, disclosures are also required on a regular basis, including upon entry into public functions and departure from office, and upon request of the Corruption Prevention Commission during and for two years after leaving office. These processes are key to detect potential conflicts of interest in public functions or post-employment. In between, public officials and their family members must file an annual declaration.

Benchmark 3.2.1.

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

In January 30, 2020 the Government adopted Decision No. 102-N of 30 January (further amended in May 2021) establishing the sample forms of declarations of property, incomes, expenses and interests of a declarant official, and of property and incomes of his or her family members. This new template of asset, income and interest declarations covers the following elements:

- Assets (immovable property, vehicles, securities and other investments, transferred and returned borrowings, bank deposits, cash funds, balances on electronic wallets and cryptocurrency, assets located in a foreign state);
- Incomes (including all sources);
- Expenses;
- Interests (participation of a public official and family members in commercial and non-commercial organisations, political parties, power of administration rights, state signed contracts).

However, the monitoring team has identified one element required by this benchmark that is not always covered - unpaid activity is not explicitly covered in interest declarations. According to article 42 of the Law on Public Service, a person holding a public position and a public servant shall provide information about participation in commercial organisations, management bodies, administrative or control bodies of commercial organisations, non-profit organisations and their management, administrative or control bodies. According to the CPC, the terms “membership” and “representation in the management,

administrative or supervisory bodies" include both paid and unpaid activities, but it is not made explicit in the declaration forms. In practice, the CPC addressed many forms of unpaid activity, but not all, and where this is not covered in the regulations, the risk remains.

Meetings with stakeholders and civil society representatives revealed that the scope of disclosure is broad and allows detection of conflict of interests and illicit enrichment.

Benchmark 3.2.2.

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

In 2021, amendments were made to the Law on Public Service that require declaring expenditures as well as information on indirect control of assets, i.e. actually possessed assets as well as beneficial ownership of companies domestically and abroad. However, this does not concern all politically exposed persons as defined under the Law on Combating Money Laundering and Terrorism Financing (2008).

Benchmark 3.2.3.

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

According to Article 42 of the Law on Public Service, declarations of interests must include the name of the commercial organisation wherein the declarant official and/or his or her family members are founders or have a share in the authorised capital or are actual beneficiaries, and the "amount of direct or indirect participation of declarant official and/or his or her family member" in a commercial organisation (units, stocks, shares). This also includes commercial organisations wherein the share of the declarant official is transferred to trust management.

The Decision No. 102-N of 30 January 2020 establishing the sample forms of declarations of property, incomes, expenses and interests (as amended by Decision No 858-N of 27 May 2021) also includes all property (debt and other security, equity securities, vehicles, bank deposits) "acquired on behalf, in favour or at the expense of the declarant, belonging to the third party by ownership right", or "which the declarant actually benefits from or disposes of".

However, these provisions do not concern all politically exposed persons as defined under the Law on Combating Money Laundering and Terrorism Financing (2008).

Benchmark 3.2.4.

Scope of the disclosure includes expenditures

Article 40.1 of the Law on Public Service stipulates that the declaration must include "expenses". Since May 2021, the Decision No. 102-N of 30 January 2020 establishing the sample forms of declarations of

property, incomes, expenses and interests (as amended by Decision No 858-N of 27 May 2021), includes a separate section on expenses ("Section D: Expenses of a declarant official, minor members of his or her family and persons under guardianship or curatorship of the declarant official").

Benchmark 3.2.5.

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

Article 42 of the Law on Public Service requires information on the names of organisation against which the property right of the official has been transferred to a trust management. Declarations online include this information for both declarant and their family members.

Benchmark 3.2.6.

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

The forms of the declarations include a dedicated section on cryptocurrencies (Section B.6.3. "Electronic accounts and cryptocurrency" and Section B.6.4. "Electronic accounts and cryptocurrency acquired on behalf, in favour or at the expense of the declarant, belonging to the third party by ownership right, or electronic accounts and cryptocurrency which the declarant actually benefits from or disposes of").

Benchmark 3.2.7.

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

Article 34 of the Law on Public Service requires adult members of the family of declarant officials to disclose information on their own assets and income upon entry into office of the declarant official, termination of office, and annually : "family members (persons within the composition of the family) of a declarant official shall mean his or her spouse, minor children (including adopted children), persons under the declarant official's guardianship or curatorship, any adult person jointly residing with the declarant official". A person is considered as residing together (cohabiting) if she/he lives (lived) with the official for 183 days or more before the day of entrance into office of the official or termination of office or during the year of declaration.

In addition, declarant officials have a duty to disclose in their declaration information on the assets and income of their adolescent children, as well as for persons within their protection or custody, to the best of their knowledge, and are liable for the validity of the information filled-in.

Benchmark 3.2.8.

Assets and interests are disclosed in one form

Officials who are required to declare their assets and interests submit the information in one form. The form is available in Decision No. 102-N of 30 January 2020 establishing the sample forms of declarations of property, incomes, and expenses and interests.

However, there are some officials who are only required to declare assets, and not interests (public servants and those who occupy discretionary offices). Separate forms are provided for adult members of the family of the declarant official who have a duty of declaration. Family members do not have to declare their interests.

Benchmark 3.2.9.

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

The following declarations are required:

- Entry/exit-declarations submitted within one month of taking or leaving the office (Article 36 of the Law on Public service);
- Annual declarations while in office – submitted each year before 31 of May;
- Situational declarations upon the request of the CPC (Article 25 of the Law on Corruption Prevention Commission).

In case of doubt arisen as to any significant changes in the property (increase in property, reduction in liabilities or expenses) of the person within 2 years after termination of official duties of the declarant official, the Corruption Prevention Commission is also entitled to require from the declarant official to submit a situational declaration on property and income.

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

Background

Electronic filing systems help facilitate the declaration, verification and investigative processes of asset and interests, and allow the publication of information online in an easily readable format. Making information available also helps to inform the public about public officials' interests, thereby strengthening accountability. The information made public can be reused for investigative purposes by journalists and other jurisdictions, for research by academia and think tanks, or for advocacy reasons by civil society organisations. This allows holding public officials accountable and verifying if they effectively made special arrangements to manage their conflicts of interest. Transparency of asset declarations through digital disclosure was among OGP commitments of the Armenian Governments through its 2016-2018 Action Plan.

Assessment of compliance

The legal framework provides for the electronic filing of declarations and their publication on the website of the Corruption Prevention Commission. The functionalities of the current electronic filing currently do not allow for an automated analysis and publication of declarations in an open data, machine-readable format. However, a new electronic platform is currently under development.

Benchmark 3.3.1.

Declarations are filed through an online platform

The current online system has been developed in 2012 and is operational since 2015 on the website of the Corruption Prevention Commission. It has a functionality enabling electronic filings of declarations. Hard copies are still allowed in exceptional cases.

Benchmark 3.3.2.

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

All declarations are available on the "Registry of Declarations" section of the Commission for the Prevention of Corruption on the 5th day following their submission (http://cpcarmenia.am/hy/declarations-registry/). Based on the decision of the Government from March 12, 2020 on the list of data to be published, the scope of publicly available information was extended. For example, it is now possible to publish the country and the town/city, where the immovable property of the public official is situated, without specifying full address details. The Decision of the Government originally also provided public access to the names of the banks where public officials had their accounts, but later this information was excluded from public access; tax numbers of public officials are also not made public. In 2020, the COVID-19 pandemic delayed the publication of certain declarations.[9]

Benchmark 3.3.3.

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

The current electronic system has limited functionalities. The current electronic database provides an option to search public official by name, surname, position held and the year of the declaration. Declarations are downloadable in a PDF format, which does not provide opportunities to extract data from declarations. However, the system does not have search functions for information in the declarations, for

[9] CPC Armenia (2020), Important announcement about declarations.

example comparing the same information in declarations submitted in different years. In addition, the system does not provide options for other automated functions, such as registration, notification, reporting and automated analysis. A new system is under preparation and will ensure that the declarations are available in a machine-readable and searchable form.

Benchmark 3.3.4.

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

The current electronic system does not provide for automated analysis. The new system that is currently under preparation will provide for this function. However, the analysis of declarations is currently based on an interim risk-analysis of red flags in an Excel sheet (see Benchmark 3.4.3).

Benchmark 3.3.5.

Assets and interests are disclosed in one form

The current electronic system does not provide options for automated cross-checks with other government databases. The current system has connections to several data sets, but it does not use the full potential of available data in state databases for an automated analysis.

In December 2020, the Government, based on the proposal of the Corruption Prevention Commission, approved new Terms of Reference for the development of an Electronic Platform for Declarations of Assets, Incomes, Expenditures and Interests (http://cpcarmenia.am/files/legislation/356.pdf). The new system, developed by the World Bank, will have all automated functions including automated registration of public officials, automated analysis of all declarations submitted, and an automated risk analysis of declarations based on risk indicators, as well as automated reporting, statistics and dashboards.

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

Background

Verification of compliance with requirements to disclose assets and interests, as well as checks on the accuracy and completeness of the content, need to be performed for effective implementation of asset and interest disclosure mechanisms. Given the broad scope covered by disclosure requirements in Armenia and the high frequency of disclosures (annually), adopting a risk-based approach to prioritising controls is necessary.

Assessment of compliance

The verification of asset and interest declarations is assigned to a dedicated agency, the Corruption Prevention Commission, but the Commission currently lacks dedicated human resources to perform its tasks. The CPC routinely verified declarations of persons holding high-risk positions or functions in 2020, even though the verifications are not systematically organised. The current electronic system of

declarations does not provide a possibility of automated analysis or identification of red flags. As an interim solution, the CPC uses its own risk management model to identify such risks based on an Excel sheet with eight risk indicators. An electronic system of declarations is under development and the staffing of the Department in charge of verifications is expected to increase in 2021.

Benchmark 3.4.1.

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

The Department of Asset declarations of the Corruption Prevention Commission is responsible for the verification of the declarations. To conduct its analysis, the staff responsible for the verification has the right to obtain information from private individuals and entities, public authorities, including access to confidential and other information with restricted access. They have access to registers and databases, such as the State Cadastre, Police, Tax Service, Banks, State Registry of Legal Entities, etc. The staff can request explanation and documents from the declarant, access banking and other financial information held by commercial institutions and other third parties. However, it does not have access to foreign sources of information, apart from open sources.

In 2018 and 2020, the Department included 2 staff members assigned to these tasks. In 2020, the number of staff increased to 5. Given the fact that the current electronic system does not provide possibilities for digitalised solutions, particularly automated analysis of the declarations, the current number of specialised staff is not sufficient to analyse all declarations. Civil society representatives interviewed during the virtual visit confirmed that, in their view, the CPC has good access to information and necessary powers to perform its mandate, but that it lacks dedicated human resources with the necessary technical skills to conduct its missions.

In December 2020, the Government requested to increase the number of staff. The Department includes 15 staff members at the end of 2021. The Commission is planning that the digital platform for automated analysis will improve the efficiency of the use of state resources.

Benchmark 3.4.2.

The following declarations are routinely verified:

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

Article 25 of the Law on the Commission for Prevention of Corruption states that the Commission must carry the following activities: “inspection of observance of the requirements for completing and submitting a declaration; inspection of reliability and integrity of declared data; mathematical analysis of declared data; declaration analysis based on risk indicators; analysis of declarations based on media publications containing circumstances having importance in terms of the analysis of declarations or based on written applications of persons”.

The CPC informed the monitoring team that in 2020 the following declarations were routinely verified, even though the verifications are not systematically organised: declarations submitted by judges and the Supreme Judicial Council (9 verifications in 2020), MPs (11 verifications), Prosecutor's Office (6 verifications) and members of the executive branch (6 verifications); no verifications were made yet for the persons involved in public procurement. The CPC confirmed that it examines external complains and notifications, including reports from citizens and media, and based on information found in open sources, including open sources available in foreign countries. In one case, CPC hired a private company abroad to collect information necessary for the verification of declarations.

Civil society representatives noted that the website of CPC published episodic pieces of information in regard to concrete cases, but systemic statistical data showing general picture is missing. Only limited information was available about these activities on the website of CPC in 2020, which created the impression that no widespread analysis of declarations was conducted. They have, however, confirmed that, according to the available information, in 2020 the CPC initiated proceedings against 21 officials for failing to submit declarations on the day of entrance into office for the period of July-December 2019, and against 34 officials for failing to submit declarations on the day of leaving the office. These proceedings have been suspended because the requested declarations have been submitted. On the website of the CPC there is a description of one case, when, based on the notification from a law company "Agla Luyser", the CPC verified the declarations of Prosecutor General for the period of 2014-2019, and revealed that in 2014 there has been an incident of negligently filling-in wrong data or incomprehensive information, which was not considered as an administrative offence at that time. The website also includes information about a case that occurred in 2020, which relates to the Minister of Labour and Social Affairs: his annual declaration of 2018 (the person was Deputy Minister at that period of time) failed to mention his salary. The CPC explained that its website was restructured in 2020 and not all information was updated.

Benchmark 3.4.3.

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

Article 25 of the Law on Corruption Prevention Commission stipulates the use of risk-based analysis for the examination of declarations. However, the current electronic system of declarations does not provide a possibility of automated analysis or identification of red-flags. As an interim solution, the CPC uses its own risk management model to identify such risks as mathematical mismatch between income and expenditure, same for property costs, disappearing assets, and mismatch of information about gifts and cash transactions available in different state databases. They extract the data from the electronic systems, enter it manually into an Excel sheet and analyse cases that indicate irregularities. The CPC confirmed that not all the risk factors are subject to analysis with this tool. The new electronic system of declarations is under development at the time of drafting of this report. It is expected that it will have the red-flag function.

Benchmark 3.4.4.

Anonymous complaints that include verifiable information trigger the verification

Anonymous complaints are not accepted by the CPC.

Benchmark 3.4.5.

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

Certain groups of public officials are prioritised by the law, particularly, members of Supreme Judicial Council, Constitutional Court and the sitting judges. The CPC analyses the declarations triggered through media publications and external complaints. In the presence of sufficient resources, declarations triggered through risk indicators are analysed. In 2020, the CPC started the verification of declarations of 400 persons holding high-risk positions and 237 declarations based on external complains and notifications. The total number of public officials that must declare is 5500.

The civil society representatives noted that the Law on Corruption Prevention Commission or other legislative acts stipulated requirements to prioritise verifications, based on available resources. They were not aware of any official procedure that the CPC is using for risks assessment or for the selection of declarations for verification.

Benchmark 3.4.6.

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

Some representatives of civil society organisations stressed that although the set up procedures of the CPC were somewhat questionable and the political parties (including the opposition) had their nominees, there are no grounds to state that there was a political bias, especially given that the nominee of the opposition was selected by the members as the chair.

According to points 63-64 of the Anti-Corruption Strategy for 2019-2022, members of the CPC are to be appointed through a competitive procedure. However, given the “objective necessity of prompt formation of the Commission”, the Strategy recommended to form the CPC by direct nomination among candidates representing different political parties (including opposition). Legislative amendments were made in 2020 to require members to be nominated through a competitive procedure overseen by the Competition board, which is comprised of representatives from the Human Rights Defender, the Chamber of Advocates, the Supreme Judicial Council, the Government, factions of the National Assembly or the Council of the National Assembly. The candidate selected by this board is then presented for election by the National Assembly. In September 2021, the 5th member of the CPC was appointed through this procedure. In the future, all new members of the CPC will be selected through this procedure.

The government noted that while the perception of political bias in the initial establishment of the CPC may exist, the actual process of verification of the declarations was not impacted by this set-up due to functional independence of the CPC.

Benchmark 3.4.7.

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 1 million of population		
3.4.7.Track record of cases referred to law enforcement bodies based on the verification of declarations	1	0.3	**No points**	**No points**

There was one case referred to law enforcement bodies based on the verification of declarations in 2020, and four cases so far in 2021. The case in 2020 referred to unrealistic changes in wealth of a public official, who refused to provide additional information to justify the change. The case was referred to the Prosecutor General and the investigation is ongoing. In 2019, the previous Ethics Commission for High-ranking Officials submitted 6 reports to Prosecutor General in connection with an intentional failure of submission of declarations; in 3 out of these 6 cases were opened criminal files, while in the remaining 3 cases no criminal files were opened. [10]

Indicator 3.5. Dissuasive and proportionate sanctions are enforced

Background

Applying dissuasive and proportionate sanctions for violations for an effective asset and interest disclosure mechanism. The CPC has the right to impose administrative sanctions for late and no-submission, or faulty information. In case if the CPC detects possible criminal violations, it must transfer the case to the Prosecutor General's Office.

Assessment of compliance

Sanctions are routinely applied in practice even though civil society representatives had the view that the sanctions that can be applied for failure to submit or late submission of declarations in the form of warnings are not dissuasive, and that fines imposed for errors or omissions in the declarations are nor dissuasive, nor proportionate.

[10]General Prosecutor's Office (2019), Information on the Results of Investigation into Corruption Crimes in 2019.

Benchmark 3.5.1.

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

As a result of 637 verifications (400 of declarations of persons holding high-risk positions or functions, and 237 based on external complaints and notifications), the number of administrative proceedings started is 61, out of which 59 resulted in administrative sanctions in the form of warning and 2 in the form of monetary fine of AMD 200,000.

Benchmark 3.5.2. – 3.5.7.

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 1 million of population		
3.5.2. Track record of sanctions imposed for non-submission or late submission of declarations	59 (warning) for non-submission	19.7	**No points**	**No points**
3.5.3. Track record of sanctions (measures) imposed for conflict of interests *(including for violation of rules on incompatibilities, gifts, divestment of corporate rights, post-employment restrictions)* based on the detection through verification of declarations	0	0	**No points**	**No points**
3.5.4. Track record of sanctions (measures) imposed for illicit enrichment (unjustified assets) based on the detection through verification of declarations	0 (there are investigations but no convictions)	0	**No points**	**No points**
3.5.5. Track record of administrative sanctions for false or incomplete information in declarations imposed on high level officials	2	0.7	**No points**	**No points**
3.5.6. Track record of criminal sanctions for false or incomplete information in declarations imposed on high level officials	0	0	**No points**	**No points**
3.5.7. Track record of sanctions following verification of declarations based on media or citizen reports	2	0.7	**No points**	**No points**

Civil society has the view that the sanctions that can be applied for failure to submit or late submission of declarations in the form of warnings are not dissuasive. However, practice shows that these sanctions helped improve the overall discipline of submission. Civil society also believes that fines that can be imposed for errors or omissions in the declarations, such as negligently including wrong or not

comprehensive data in declaration, are not dissuasive and proportionate. For example, in 2020, there was a case that dated back to 2018 when the Minister of Labour and Social Affairs (Deputy at that time) did not mention his salary in the section of income, and the CPC fined him AMD 200.000[11]. It is expected that in the future when the declarations will be cross-linked with other data-bases the frequency of such cases will decline.

Benchmark 3.5.8.

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

The CPC publishes information periodically. Civil society representatives confirmed that detailed statistics on the verifications of declarations and applied sanctions is not available on the CPC's site for 2020. The CPC explained that this is due to the restructuring of the website, and assured that this information will be available as soon as the new electronic system becomes operational.

[11] CPC Armenia (2020), The Commission decided to impose an administrative penalty on Zaruhi Batoyan.

4 Protection of Whistleblowers

Armenia's Law on the System of Whistleblowing focuses on reporting procedures and is not specific enough to protect whistleblowers against retaliation. The e-platform for anonymous reports by the whistleblowers, operated by the GPO, is helpful for persons willing to report about corruption crimes. However, this system is not capable of providing protection to such persons. Internal reporting channels in line ministries are not effective. There is no possibility for the whistleblowers to report to media and other external channels. The Law does not foresee all necessary forms of protection, and no protection was ever provided to whistleblowers in Armenia so far. There is no dedicated central authority to oversee the implementation of the Law. The government is aware about the shortcomings of the current system and is planning to overhaul it in the near future.

Indicator 4.1. The whistleblower protection is guaranteed in law

Assessment of compliance

The current Law on the System of Whistleblowing dates back to 2017. It focuses on creating channels for reporting information about crime, and less on the protection to whistleblowers. It provides two reporting channels – inside the state or public bodies and the e-platform that allows anonymous reports to the Prosecutor General's Office. The Law does not include the possibility for whistleblowers to disclose their information directly to media. There is no dedicated body to oversee the implementation of the Law. The Government of Armenia is aware of the shortcomings of the current Law and is planning to reform the whistle- blower system in the near future, that will provide an opportunity to bring it in compliance with international standards and good practices.

Assessment of compliance

Benchmark 4.1.1.

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

The scope of the Law on the System of Whistleblowing is broad: various types of violations can be reported, including corruption offences and other anti-corruption restrictions. However, in practice, the system is focused on the detection of corruption-related crimes by providing confidentiality and protection to those who report crimes through an anonymous electronic platform operated by the Office of the Prosecutor General. People who report through the e-platform report about various wrongdoings, where the prosecutors follow-up on the signals about corruption and other crimes; reports related to ethics are sent to the ethics commissions of state bodies.

Although the Law does not explicitly state that the person who reported inaccurate information by honest mistake will receive protection, Article 13 does not exclude that protection will be provided to these persons. Due to the lack of implementation, it is not possible to confirm that this legal norm is applied in this manner in practice.

The Law requires reports to be made in good faith, while the benchmark requires that the motives for making the report should be irrelevant for protections under the law to apply. Therefore, laws that require that reports are made in good faith will not be compliant. However, the Law further describes this term as "reasonable grounds for suspicion" which meets the requirement of this benchmark. The GPO does not apply the "good faith" check in practice when it deals with anonymous reports submitted through the e-platform.

The Law allows to report through internal or external channel, however these channels are not properly implemented. In addition, since the internal channels pass through immediate supervisor or other superior of the reporting persons, it is not possible to guarantee confidentiality of the whistleblower in practice. There are no whistleblowing cases other than criminal cases reported to the GPO - the lack of a channel which ensures confidentiality may be one of the reasons for not reporting.

Benchmark 4.1.2.

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

The Law is applicable only to the public sector, it does not cover whistleblowing in the private sector. Although the definition of the whistleblower is quite general, the Law only states that whistleblower is natural or legal person, who reports. According to the wording, it seems that the personal scope of the law includes groups listed in the benchmark, i.e. both public and private sector employees can blow the whistle, but only about wrongdoings in the public sector. It also includes the actions of those private sector entities who provide public services.

The Law does not explicitly state that the whistleblower can make a prima facie case that measures taken against him or her by the employer were the result of having made a report. The Law does not require the employer to demonstrate that the measures taken against the whistleblower were not linked to or motivated by the report. Therefore, the Law does not establish the shift of the burden of proof on the employer as required by this benchmark.

Benchmark 4.1.3.

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

Benchmark 4.1.4.

The law provides for the following key whistleblower protection measures:

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

According to Article 11 of the Law, "when submitting an anonymous report, the non-disclosure of the whistleblower's personal data to both the competent authority and other persons is guaranteed, except in cases when the whistleblower discloses his personal data." In addition, there are sections in Article 6 (subsection 3) and Article 7 (subsection 3), which state that confidentiality of the instituted proceedings must be ensured. Technically, the Law meets the benchmark, but there is no implementation practice yet.

While the Law states that protection of the whistleblower must be guaranteed, there is not further procedures or practice outside the witness protection that is applicable in criminal procedures. Whistleblowers are guaranteed witness protection in criminal proceedings, no such protection is provided outside criminal proceedings. In principle, individuals can ask for protection through the e-platform run by the GPO, but in this case, they will need to disclose their personality, and they may be granted witness protection. However, if individuals report about unexplained wealth or other non-criminal issues, they cannot claim witness protection. The law does not meet the benchmark, which requires that whistleblowers are provided protection also outside the criminal proceedings.

The legislation does not meet the benchmark, which requires that law ensures that a qualified whistleblower under the law is not subject to criminal, civil, administrative or labour related liability for making a report unless he/she committed a criminal offense in order to obtain the reported information. Unscrupulous reporting is an administrative offense in Armenia. While information provided in such cases is considered, even if it was obtained in violation of constitutional rights of others, there is administrative liability for unscrupulous reporting, where legal liability is triggered by the offence with higher public danger.

The legislation also meets the benchmark that requires that the law should prohibit the employer from any threats or acts which disadvantage a whistleblower in the workplace because he/she made a report using internal or external channels.

Benchmark 4.1.5.

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

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

The Law does not provide for additional pre-retaliation protection measures, therefore, it does not meet the benchmark.

The Criminal Procedure Code provides pre-retaliation measures, such as protection during criminal procedures. More specifically, Article 98, Section 1, prescribes the following: “Participants in criminal proceedings or any person who reports of a crime, who may provide information relevant to the detection or commission of a crime, and as a result of which may be endangered his/her or family members, close relatives or relatives’ life, health, property, rights and legitimate interests, has the right to protection.” However, the benchmarks requires that pre-retaliation protection measures are provided in the law for whistleblowers protection.

Benchmark 4.1.6.

The law provides for the following post-retaliation remedies:

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

The Law does not provide for post-retaliation remedies. According to the Decision of the Government of the Republic of Armenia, N 272-Ա, of March 15, 2018, in order to protect the whistleblower from harmful actions or their consequences, the competent person or authority, within the scope of its authority, shall: restore the whistleblower to his/her job, undertake appropriate measures to compensate for damages suffered by the whistleblower. While the introduction of the possibility of reinstatement and compensation is positive, this does not satisfy the benchmark, which requires such and other measure to be provided in the law. Although public officials that were interviewed during the virtual visit to Armenia noted that it is possible to use various civil law actions to defend oneself - in the absence of practice it is not possible to assess it.

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

Benchmark 4.2.1.

All three types of channels for reporting are available, including:

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

All three channels have to be available in law and exist in practice for this benchmark to be met.

The Law provides the possibility for reporting internally at the workplace and to the external electronic system managed by the Prosecutor General’s office.

Despite the legal provision that prescribes internal reporting channels in work place in the public sector, in practice this provision does not work. According to the 2020 survey conducted by TI , out of 57 state bodies only the Ministry of Defence received whistleblowers’ reports through their internal channels. Not

all state and public institutions have established such reporting channels. Where they exist, the reporting is done to the supervisor, which is not a good practice. There is no data on the use of these channels, and only a few reports have allegedly been made in the field of defence.

Existence of internal channels in practice is hard to attest. The Law does not provide possibility of publicly disclosure.

At the same time, the electronic platform operated by the Prosecutor General's Office works well, primarily because it ensures the anonymity of the reporting person, but it is only focused on reporting crimes and not other wrongdoings.

Benchmark 4.2.2.

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

The Law establishes that anonymous reports are accepted both through internal and external reporting, and protection should be provided to anonymous reporters that were identified. According to the Law, Article 6, section 3, subsection 3, "The head of the competent body or his / her authorized person shall ensure the confidentiality of the initiated proceedings". Therefore, technically the Law meets the benchmark. However, it is difficult to ensure anonymity in the case of internal reporting, as the primary recipient of the report is the immediate supervisor.

Benchmark 4.2.3.

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

There is no central authority in Armenia with the specified mandate for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers. The system is decentralised: individual state and public bodies have to establish reporting channels, receive and investigate reports and provide protection. According to the Government Decision on Approving the Sample Form of Recording and Processing Reports in Cases of Internal and External Whistleblowing as Well as Establishing the Procedure for the Implementation of Protection Measures Provided to the Whistleblower, dated 15 March, 2018, each state body shall designate a responsible official for registering and ensuring that further steps are undertaken in relation to the whistleblowing. Even if designated authorities have an obligation to set up internal channels, there are authorities where no system has been set up. It is not known what resources are available for the internal channels where they were set up. There are also no data on the use of internal channels, and only a few reports have allegedly been made in the field of defence. In the absence of whistleblower reports, it is also not possible to assess how effectively the channels are working. The absence of reports may indicate that these channels are not working, are not implemented sufficiently and that there is no trust in them.

Draft amendments to the Law are being prepared with the view to establish a state body that will be responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers.

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

Benchmark 4.3.1.

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

Since the adoption of the Law in 2017, there have been no cases in Armenia where whistleblower has been offered protection. Interviews conducted by the monitoring team with the governmental and non-governmental representatives during the virtual visit indicated that there is no clear understanding of how the system of protection of whistleblowers works in the practice. As noted above, the absence of reports inside state bodies may indicate that the internal channels are not working, and that there is no trust in them. Although the electronic platform managed by the General Prosecutor's Office seems to be working better due to ensured anonymity of reporters, the data shows that reporting rate has decreased in 2020. This may be due to a war and political uncertainty, but at the same time gives input to the suspicion that the whistleblowing platform is not widely known and it cannot protect the whistleblowers from retaliation.

Benchmark 4.3.2.

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

The data are only available for reports submitted through the electronic platform. The GPO conducted an awareness raising campaign to promote the channel. This helped to improve reporting, reports were received even from far-away regions of the country. It has also conducted a survey on public awareness about the e-platform and studied statistics. There is a unit of 3 prosecutors who review reports submitted through the e-platform and distribute them further among the prosecutors specialised in various crimes or send reports related to ethics, including conflict of interest, to the ethics commissions in relevant state bodies. In several cases, the GPO also sent received information to the National Security, police and military police, and tax authorities.

There is no other information and data on the implementation of the law, submitted reports, protection offered to the whistleblower, and other related activities. There is also no authority responsible for collecting the data.

New legal regulations are currently being drafted, that will ensure proper statistics to be held and published by respective bodies. Besides, it is supposed that responsible body will be defined that will conduct monitoring over this process.

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

Assessment of compliance

Benchmark 4.4.1. – 4.4.5.

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 1 million of population		
4.4.1. Track record of whistleblower reports received by public authorities through internal channels (*they have the obligation to collect and report this data, lack of stats means there were no reports)*	n/a	-	**No points**	**No points**
4.4.2. Track record of whistleblower reports that were received by the central authority *(electronic unified platform run by the GPO)*	111	~37	**No points**	**No points**
4.4.3. Track record of consultations to whistleblowers provided by the central authority	n/a	-	**No points**	**No points**
4.4.4. Track record of criminal cases for corruption offences that were started as a result of whistleblower reports	20,8% of 111 cases (~24 cases)	~8	**No points**	**No points**
4.4.5. Track record of at least one of the protection measures from those listed under 1.4-1.6 *(according to GPO there were no requests to provide protection)*	n/a	-	**No points**	**No points**

Note: According to the GPO, it only received reports about crimes or ethics, and never a request for protection. There were no cases when protection was requested for witnesses either. In a hypothetical case of retaliation, the Labour Code sanctions can apply, such as a reprimand or dismissal of the official.

Benchmark 4.4.6.

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

No data was provided regarding the protection granted to whistleblowers. According to the non-governmental and international partners interviewed during the virtual visit, there was no effective response to the whistleblowers' reports in the defence sector.

Benchmark 4.4.7.

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

According to the government, there were no cases of breaches of confidentiality.

5 Independency of Judiciary

Armenia has started reforms of its judiciary towards international standards and good practices, integrity of the judiciary is one of the priorities of anti-corruption reform. Judges enjoy life tenue, and they enjoy greater freedom than under the previous regime. The Supreme Judicial Council was created as a self-governance body aimed to ensure independence and integrity of judges. While half of its members are elected by judges themselves, the other half is elected by the Parliament without transparent selection or merit-based criteria. The Council plays a key role in the career of the majority of judges, but this excludes judges of the Cassation Court. Further improvements are needed in appointment and promotion procedures, grounds for disciplinary proceedings, distribution of cases, as well as the transparency of the Council. The practice of integrity vetting and evaluation of judges needs to be monitored to ensure that it does not undermine their independence. The funding of the judiciary and remuneration of the judges and the judicial staff are low. Overall, as one non-governmental partner put it, the reforms have so far only touched the surface, and deeper reforms and renewal of the judiciary are needed to rebuild public trust. In addition, Armenia decided to create an Anti-Corruption Court and agreed to involve international experts in the selection of its judges. The relevant legislation was adopted in April 2021, but it was challenged by the President before the Constitutional Court. On 12 October 2021 Constitutional Court refused to accept the President's application, the legislative package is expected to enter into force on October 29, 2021.

Indicator 5.1. Judicial tenure is guaranteed in law and practice

Assessment of compliance

Judges in Armenia are appointed until the legal retirement age. According to the government, two judges were removed from their positions in 2020 due to a disciplinary violation. According to the civil society, one more judge was removed based on a criminal case. It will be important to continue monitoring the practice of irremovability of judges, especially as the CPC will start the integrity vetting of sitting judges and the Evaluation Committee will start its operations, which may result in removal of judges.

Benchmark 5.1.1.

Judges are appointed until the legal retirement age. If not, clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the law and used in practice

The legal retirement age for judges in Armenia is stipulated in article 166, part 8 of the Constitution, which states that “judges shall hold office until attaining the age of sixty-five, whereas judges of the Constitutional Court — until attaining the age of seventy”. According to Article 56 the Judiciary Code, “A judge shall serve in office until the age of 65”.

Where the number of judges is reduced or the court is dissolved, relevant judges shall be deemed to be reserve judges whereas their status, including the right to receive salary and increments and the right to be or remain included in the promotion list of judge candidates, shall be maintained until reaching the age limit for judges to serve in office.

Persons undergoing professional training included in the lists of candidates for judges and prosecutors pass a mandatory probationary period. The duration of the probationary period is defined by the relevant training program, but cannot be less than 3 months.

During the virtual visit, the monitoring team was reassured by both governmental and non-governmental partners that judges enjoy their tenue in practice.

Benchmark 5.1.2.

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

Judges in Armenia can be removed from office by the decision of the Supreme Judicial Council on grounds established in Article 159 of the Judicial Code, including violation of incompatibility requirements, engagement in political activities and physical incapacity to work. Judges can also be removed because of a disciplinary proceeding on the basis of the negative results of integrity vetting by the CPC. Besides, according to Article 149 of the Judicial Code, the Supreme Judicial Council may impose termination of powers on the ground of an essential disciplinary violation that involves serious violations of human rights.

The CPC also has the mandate to conduct studies with respect to the integrity – integrity vetting - of candidates to the Supreme Judicial Council and to the Constitutional Court, contenders for judge candidates. The vetting has started, as noted in PA 1, but the civil society has a view that the vetting of judges by the CPC presents a potential problem. The CPC is given the power to conduct the integrity vetting and to provide “Conclusion of Advisory Nature” for the candidates to judicial positions; this Conclusion is not a public document and the process of its adoption is not transparent. In practice, no vetting was conducted recently and there were no dismissals due to ad-hoc vetting.

Finally, according to the Constitutional Law on Making Amendments and Changes to the Judicial Code, adopted on 25 March 2020, new institute for the evaluation of judges is established, where the Evaluation Committee established by the General Assembly of Judges on 2 August 2020 will evaluate the activities of judges on the basis of criteria defined by law Articles 136-140 of the Judicial Code. The evaluation process has started with the first regular evaluation of judges carried out in the period from September 1, 2020 to September 1, 2024. While the evaluation of performance of judges does not lead directly to removal of a judge, the Commission for Performance Evaluation of Judges can apply to the Ethics and Disciplinary Commission to consider instituting disciplinary proceedings against the judge, and the results of the disciplinary proceeding can provide grounds for the dismissal by the SJC. This will present a potential threat to the irremovability of judges, as the assessment of activities may indirectly lead to the removal of the judge from the post. The government reassured the monitoring team that the evaluation process will in no way lead to the dismissal of judges; the practice will need to be monitored closely in the future.

While the legislative basis for the judicial irremovability is in place, it transpired from many interviews conducted by the monitoring team that there are strong tensions between the judges – most of whom took their positions before the velvet revolution - and the new government. For instance, a judge of the 1st

instance court was prosecuted by the GPO for his decision to release the former President, claiming that the judge did not formulate this decision himself. There are also allegations that if the GPO is not happy with a certain judge, it can suggest to the Ministry of Justice to initiate disciplinary proceedings against him or her. The recent suspension of the President of the SJC for criminal investigation supports this allegation.

According to Freedom House's "Freedom in the World 2020" report, "changing the composition of the Constitutional Court remained a controversial priority for the current authorities. The court Chairman was charged with "usurping power" in December. That same month, a new law came into effect giving Constitutional Court judges a financial incentive to retire early." On June 30, 2020, the Law on Making Amendments and Alterations in the Constitutional Law on Constitutional Court was adopted, by virtue of which former Chairman of the Constitutional Court became just a judge in Constitutional Court, and 3 judges were removed and new 3 elected.

Civil society representatives confirmed that despite several developments described above, the respect for judicial irremovability has been upheld in practice so far. It will be important to ensure a continuous monitoring of this issue to avoid any bad practices in the future.

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

Assessment of compliance

The Supreme Judicial Council plays a decisive role in the appointment and dismissal of judges of the courts of the first instance and appeal courts, where the Council submits its proposals to the President and there is a clear procedure for cases when the President disagrees. This procedure meets the requirements of this benchmark. However, in relation to the judges of the Cassation Court, the Supreme Judicial Council can only make proposals, which require the approval of the Parliament before the submission to the President. There is no possibility to challenge Parliament's decision as in the case of other courts. This procedure does not meet the requirements of this benchmark. While the selection and appointment of judges is competitive, based on merits and is relatively transparent, the promotion process is not.

Benchmark 5.2.1.

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

According to article 173 of the Constitution, the Supreme Judicial Council is an independent state body that guarantees the independence of courts and judges. According to article 89 of the Judicial Code, the Council selects candidates for appointment to the position of judges and for the promotion, and presents them to the President for approval. According to Article 117 of the Judicial Code, the President may return to the Supreme Judicial Council the proposal with the objections. If the Supreme Judicial Council does not accept the objection of the President, the President within three days has to appoint proposed candidates or apply to the Constitutional Court.

The above procedure applies to the appointment of judges of the courts of the first instance and appeal courts, and meets the requirements of this benchmark.

However, in relation to the judges of the Cassation Court, the Supreme Judicial Council can only make proposals, which require the approval of the Parliament before the submission to President. There is no possibility to challenge Parliament's decision as in the case of other courts. This procedure does not meet the requirements of this benchmark.

Besides, according to Article 166, part 3 of the Constitution, judges of Supreme Court are selected by the Parliament and then appointed by the President, thus the Supreme Judicial Council does not play a key role in appointment of the Supreme Court's judges.

The monitoring team recognises that in order to properly limit discretion of political bodies in these decisions, constitutional amendments will be necessary.

This monitoring report did not analyse the appointment of judges to the Constitutional Court. However, examples provided by the civil society demonstrated that the process of appointment of judges to this Court is also politicised,[12] According to the civil society, the recent removal of judges of the Constitutional Court gave rise to concerns of political motivation.[13] Though the Venice Commission has approved the creation of the new model of Constitutional Court and the renewal of the court providing transitional period and due guarantees. Similarly, the election procedure of new members by the Parliament was not clear enough to exclude the possible political interventions. For instance, one of the candidates presented by the President was not voted by the Parliament, although the necessary criteria have been fulfilled.[14] On the other hand, other members have been elected, although according to the information spread by media, the candidates had received negative conclusion by the Corruption Prevention Committee[15]. While discretion cannot be removed from all the procedures, it should be limited to avoid arbitrariness. According to the Council of Europe Recommendation # R (80) 2, an administrative authority, when exercising the discretionary power, observes objectivity and impartiality, taking into account only the factors relevant to the particular case.

Benchmark 5.2.2.

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

Articles 95-120 of the Judicial Code establish the selection procedure of judges. Articles 122-135 of the same Code establish the promotion procedure of judges and criteria as well. The criteria for assessing written exams and for assessing the candidates during interviews are clarified in Supreme Judicial Council's decisions.

[12] Aysor (2019), German Professors Speak about Candidate for a Judge in Armenian Constitutional Court.

[13] European Commission "Democracy Through Law" (Venice Commission) (2020), Opinion: Three Legal Issues on the Draft Constitutional Amendments on the Defense of Judgements of the Constitutional Court of 19 June 2020 ; Azatutyan (2020), Judges of the Constitutional Court Question the Legality of Their Dismissal.

[14] Azatutyun (2019), Gor Hovhannisyan was not elected a member of the Constitutional Court.

[15] Lragir (2019), Dedicated to Members of Parliament Asking Questions to Candidate for Judge of Constitutional Court.

Representatives of the Supreme Judicial Council that are responsible for the selection and promotion of judges, interviewed during the virtual visit, explained further that in order to become a judge, any person meeting the established criteria can apply. The procedure includes a written test, candidates who obtain at least 60 points are shortlisted. The shortlisted candidates are then invited to the interview and undergo a physiological test. The CPC is expected to conduct the integrity test of the candidates. Besides, as a result of legislative amendments of 25 March 2020, Article 108 of Judicial Code was supplemented by the following provision "8. When conducting the voting for the list of candidates for judges, the members of the Supreme Judicial Council shall take into account the results of the written qualification examination, the interview, the results of the psychological test, and the opinion on the candidate provided by the Commission for Prevention of Corruption."

Armenia agreed with international community to involve international experts in the forthcoming selection of judges of the Anti-Corruption Court that will be conducted by the SJC. However, these experts will have only advisory role.

The civil society representatives voiced concerns that the selection procedures have important shortcomings. In particular, they noted the lack of precise criteria for the selection of members of the Examination Committee, as defined in Judicial Code (Article 104), criteria for assessing written exams, and criteria for assessing the candidates during interviews. Besides, they raise concerns about the independence of the Supreme Judicial Council that is responsible for the selection .

Notwithstanding the above shortcomings of the selection process, which needs to be improved, the monitoring team holds the view that the selection procedure, as established by law, is overall competitive and is based on merit; it therefore meets the requirements of this benchmark. While the legislative basis for the selection of judges of the first and second instances is complaint with the benchmark, selection of judges of the Cassation Court does not follow the same approach and is open to political discretion, as described in benchmark 5.2.1., it is therefore not compliant with merit-based requirements.

Regarding the promotion, while law establishes general merit criteria, the procedure is not transparent. Based on the results of the interviews during the country visit and taking into account the concerns of the non-governmental partners (below), the monitoring team formed a view that in practice loyalty to the system is the main criteria for promotion.

Civil society representatives shared their concerns about the promotion as well. They descried promotions to Courts of Appeal, where 3 categories of judges can apply, including 1) judge in relevant specialization from the first instance court who has at least 3 years of professional experience and who does not have disciplinary violations; 2) former judge who operated during last 10 years and who has 5 years professional experience of judge; 3) person who has scientific degree in law and during last 8 years lectured law in higher education institution or in a scientific institution, conducted scientific work (Article 123, part 6 of Judicial Code). Then, Article 124 of Judicial Code stipulates that the Supreme Judicial Council studies the case of candidate and selects those who will be invited for interview. In its final decision, the Council should take into consideration "necessary qualities and skills" for working in the Court of Appeal as well as the results of evaluation of candidates. After that, the Council makes open voting, and selected candidates are put on the list for promotion. When vacancies arise, the Council submits a candidate to the President for appointment, based on the following order of groups: 1st group - reserve judge from Supreme Court, who has needed specialization, and if there are more than 1 such judge, then the priority is given to one who is older than others; 2nd group - to the judge of Supreme Court who has relevant specialization and who asked from the Council (in writing) to transfer him/her to Court of Appeals; 3rd group - to a person who was included in the list earlier than others and, if there are many such persons, then priority is given to one who is older than others.

Benchmark 5.2.3.

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

The Judicial Code (Article 95) establishes rules for the publication of information about judicial vacancies and about the results of all stages of selection of judges, which require the publication of the announcement about the qualification checks, the number of vacancies, the form of the written examination for qualification, the minimum requirements regarding the structure and content of the examination questions, the procedure for arranging and holding the written examination, use of legal or other documents or technical means, evaluation of the examination papers, the minimum passing score. Articles 100 and 102 further require the publication of the scores obtained by the contenders as a result of the written examination and the results of the interview. Article 102, part 2 provides that the entire process of the written examination and of the interview, except for the final discussion of the results of the interview among the members of the Supreme Judicial Council, shall be audio-video recorded and may be open to public.

The civil society representatives confirmed that the announcements about the vacancies are published as well as the summarised results of the written tests and interviews. However, it appears that justifications about the final decisions are not published, just as the final discussion of the selection results of the Council. It is not clear how the transparency of the assessment of candidates is ensured to demonstrate that good candidates received good scores and no results were tricked. Besides, it is important to ensure that integrity vetting is transparent to the society.

While the public disclosure of such information may appear contradictory to the private life and protection of personal data, and may discourage some candidates to apply, it should be an important measure to improve the trust of the citizens in the judiciary in Armenia. Similar concerns were raised in another ACN country that suffers distrust of citizens to its judges and it was accepted that judges as important public officials need to accept higher degree of disclosure than other citizens. For example, according to the judgement of the ECHR in case of the Centre for Democracy and the Rule of Law v. Ukraine (Application no. 10090/16) such information is meeting public-interest test and can be disclosed.

Regarding the promotion of judges, the Judicial Code does not require disclosure of justifications, which is a shortcoming. Articles 122-135 of the Code establish the process of promotion, it is stated that SJC members select candidates for the promotion based on his or her inner conviction, vote "for" or "against", and in this way the list is formed.

Indicator 5.3. Court presidents do not interfere with judicial independence

Assessment of compliance

The selection of most court presidents is in the hands of the Supreme Judicial Council, which is compliant with the benchmark, but the procedure is not transparent and the criteria are not objective enough. It is worrying that the selection of the president of the Cassation Court is in the hands of the President. The role of the court presidents has been reduced during recent reforms, and they do not have a role in deciding on the remuneration of judges. However, a concern remains regarding the allocation of bonuses.

Benchmark 5.3.1.

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

Presidents of the first instance and appeal courts are appointed by the Supreme Judicial Council based on the procedure, provided in Article 121 of the Judicial Code. The Judicial Department of the SJC prepares a proposal regarding candidates to the positions of court presidents, there is no transparency in this process. The criteria for the SJC to select the presidents are the following: professional reputation; attitude towards colleagues and organisational and managerial abilities of a judge, and other features characterising the skills and qualities displayed by the judge. The criteria provided in this Article should be improved with the focus on merits and objectivity. The procedure for selection and evaluation of candidates can also be made more transparent, by improving the transparency of the Supreme Judicial Council. Notwithstanding these shortcomings, the monitoring team believes that overall these provisions are satisfactory as they are intrusted to the Supreme Judicial Council and thus prevent the politization of the process.

However, the monitoring team is concerned that appointment of the president of the Court of Cassation opens the possibility for political pressure from the legislative branch, as provided in point 13 of Article 135 of the Judicial Code, which prescribes that a chairperson of the Cassation Court is appointed by the Parliament. It is particularly worrying as this level of court is the main communication channel between the judiciary and other branches of power, and any political interference in its operations sends a wrong message to all other judges.

Benchmark 5.3.2.

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

Court presidents do not have any role in questions of remuneration received by judges. According to Article 57 of the Judicial Code, the relations with regard to calculations and amounts of remuneration of judges, including calculations and amounts of basic and additional salaries, shall be regulated by law. The Law on Remuneration of Public Officials sets the salary rates, including calculations and amounts of basic and additional salaries, for the public officials, including for judges and presidents of the chambers and courts.

The government noted in the answers to the questionnaire that ”judges do not receive any kind of bonuses”. However, during the virtual visit the monitoring team was informed that all public officials, including judges, receive bonuses that are approximately 30% of their total pay. The government further clarified in the information provided after the virtual visit that, according to Articles 6 and 13 of the Law on Remuneration of Public Officials, the judge is paid a bonus of 2% for each year of service, but not more than 30% of the basic salary. In 2020, judges were paid up to 25-30% bonuses that were provided by the budget allocation to the Supreme Judicial Council and then distributed to courts, depending on the number of staff. It appears that these bonuses are not discretionary.

The SJC does not have a role in deciding the exact amount of bonuses to individual judges. Each year the SJC establishes one unified level of bonuses to judges within the framework of the budget allocations to the Supreme Judicial Council and courts. Judges are paid up to 25-30% bonuses each year, depending

on the number of vacancies of judges in the current court, i.e. the unspent salaries are equally shared among the judges in the office.

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

Assessment of compliance

Funding, provided to the judiciary from the budget, is systematically lower than the funding that was requested. While judges in Armenia receive the highest salary compared to other public officials, it is not sufficient to ensure their autonomy, especially when they are permanently overloaded with cases. Remuneration of court staff is low.

Benchmark 5.4.1.

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

According to Article 38, part 6 of the Judicial Code, the Supreme Judicial Council presents budgetary bid for the judiciary to the Government on annual basis. If the Government does not agree, then 'negotiations' start. According to the civil society organisation - Protection of Rights without Borders - which specialises on the judiciary, "in practice the funding level of judiciary is not enough". This civil society organisation conducted a study of the judiciary in 2018 and in 2021 that focused on the functioning of judicial self-governing body, including financing and budgeting of the judiciary. The studies show that the financing of judiciary is not sufficient. Particularly, problems with financial and material technical issues of the courts have been mentioned, such as insufficiency of paper, paint, envelopes for the court staff, lack of technical equipment etc. The problem of low salaries has been emphasized both for the judges and for professional staff.

According to the study "Comprehensive Concept of Improving the Effectiveness of Justice in RA" conducted by the Supreme Judicial Council in 2018-2019, the current social guarantees for judges and judicial servants, as well as the financial resources for the operation of the judiciary bodies (such as electronic systems) are not sufficient "for functional, structured, material and social independence of judges and courts". Proposals to improve funding of the judiciary and to improve its efficiency were included in the 2019-2023 Strategy for Judicial and Legal Reforms, together with other proposals related to appointment of judges and subjecting them to disciplinary liability, proportional remuneration of judges and their staff, enhancing the public confidence in judges. The funding for the past three years is presented below.

in thousands of AMD	2018	2019	2020
The amount of budgetary request of the judiciary	11 664 465,8	12 625 973,4	21 195 745,0
Amount of state budget allocation for the judiciary	8 800 257,6	12 380 667,6	12 662 335,6
Amount of budgetary funds de facto disbursed to judiciary by the end of each year	8 431 514,9	11 903 438,6	11 745 698,6

However, the government noted that since 2021 the funding of the judiciary has increased significantly. For 2021, extra AMD 18 500 000 (approximately EUR 34 059) is provided for training of judges, approximately AMD 1 billion (approximately EUR 1 841 051) is provided for construction, reconstruction and improvement of working conditions, approximately extra AMD 1 billion (approximately EUR 1 841 051) is provided for development of e-justice system. For the year 2022, approximately extra AMD 50 million

(approximately EUR 92 052) shall be provided for trainings and approximately AMD 2.2 billion (approximately EUR 4 050 312) for construction/reconstruction. These are positive developments, which may influence the rating under this benchmark in the next monitoring report.

Benchmark 5.4.2.

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

As noted in benchmark 5.3.2, the Law on Remuneration of Public Officials sets the salary rates, including calculations and amounts of basic and additional salaries, for the public officials, including for judges and presidents of the chambers and courts. According to this Law, coefficients for calculating the official pay rates for judicial remuneration varie between 10-16 (monthly AMD 661 400- 1 058 240) depending from the level of the court (for the reference, the highest rate envisaged in the law is 20 - for the President of the State; for the Ministers this rate is 12), i.e. the judge salary is amongst the highest rates. According to Articles 12-13 of Law on remuneration, an increment shall be paid to the president and the members of the Constitutional Court for the record of work in the position of a judge in the amount of 2 percent for each year.

According to the study "Comprehensive Concept of Improving the Effectiveness of Justice in RA", conducted by the Supreme Judicial Council in 2018-2019, providing a competitive salary to judges and their staff is of primary significance from the point of view of promoting the access of highly qualified professionals to the judicial system and ensuring their independence. Thus, for achieving the goals stipulated by this Strategy, it is necessary to provide judges and their staff with an adequate remuneration. The average annual workload per judge in all types of cases in 5 years rose for 2-3 times, while the official pay rate of judges has not been changed since 2014.

The recent study conducted by the EU TAEX mission has come to the same conclusion and recommended an increase in the remuneration level of judges.

Information about the current level of remuneration of judges is provided below, these do not include bonuses:

in thousands of AMD with EURO equivalents		2018	2019	2020
Average amount of monthly salary for judges of different levels (including main salary and all supplements), including:				
a) Average amount of monthly salary for judges of Court of Cassation (including main salary and all supplements)	President of the Court	1 594,9	1 417,6	1 417,6 2500 euro
	Judge	1 207,6	1 219,8	1 190,3 2090 euro
b) Average amount of monthly salary for judges of Court of Appeal (including main salary and all supplements)	President of the Court	924,0	934,1	944,3 1660 euro
	Judge	969,8	975,6	973,6 1710 euro
c) Average amount of monthly salary for judges of Court of First Instance or Specialized court (including main salary and all supplements)	President of the Court	984,6	968,2	974,9 1710 euro
	Judge	815,3	798,8	799,7 1405 euro

The level of the judicial remuneration should be decent to allow judges to support themselves and their families. However, it is not the level of pay, but the mind-set of a judge that determines if he or she will remain honest or will be tempted by a bribe. One of the civil society representatives interviewed during the country visit stressed that the declarations of assets of judges show that they are mostly rich people, and it is not necessary to pay them higher salaries. However, the monitoring team agrees with many other

views expressed during the virtual visit that the current remuneration system overall is not sufficient to protect honest judges from corruption risks.

Benchmark 5.4.3.

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

According to the Law on Remuneration of Public Officials, coefficients for calculating the official pay rates for the court staff and judicial assistants is between 3.88- 7.5, which is more than average salary in Armenia. However, all interviewed representatives of governmental and non-governmental organisations stressed that the level of their remuneration is not sufficient, especially in the view of the significant increase in the work load. The monitoring team concluded on this basis that the level of remuneration of the court staff and judicial assistants is not sufficient, as in the case of judges.

Information about the current level of remuneration of court staff and judicial assistants is provided below:

in thousands of AMD with EURO equivalents	2018	2019	2020	
Average amount of monthly salary for judges of different levels (including main salary and all supplements), including:				Average amount of monthly salary for judicial assistants and court staff (including main salary and all supplements), including:
a) Average amount of monthly salary for judges of Court of Cassation (including main salary and all supplements)	243,9	269,5	274,8483 euro	
b) Average amount of monthly salary for judges of Court of Appeal (including main salary and all supplements)	256,6	256,6	265,2465 euro	
c) Average amount of monthly salary for judges of Court of First Instance or Specialized court (including main salary and all supplements)	256,6	256,6	265,2465 euro	

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

Assessment of compliance

The Supreme Judicial Council of Armenia is established by the Constitution, it is composed of 10 members, including 5 judges elected by the General Assembly of Judges. However, the selection of 5 other members

of the SJC by Parliament is not transparent or based on merit as required by the indicator. The SJC is responsible for all aspects of the judicial career, except for the judges of the Cassation Court, which is an important gap. Besides, there are serious concerns about the impartiality of the members of the SJC and the political pressure on them. The transparency of the SJC is not up to the requirements of Indicator 5. Rules of conflict of interest for judges are too narrow and little applied.

Benchmark 5.5.1.

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

The Judicial Council is established under the Constitution of Armenia. The powers and procedures for its functioning are provided by the Judicial Code of Armenia.

Benchmark 5.5.2.

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

According to Article 174 of the Constitution, the Supreme Judicial Council is composed of ten members. Five members of the Supreme Judicial Council are elected by the General Assembly of Judges from among judges having at least ten years of experience as a judge.

Benchmark 5.5.3.

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

As noted under benchmark 5.5.2, five members of the Supreme Judicial Council are elected by the General Assembly of Judges.

Benchmark 5.5.4.

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

While it is positive that half of members of the Supreme Judicial Council are elected by non-judiciary, there are no procedures for their selection, and it is a political process.

More specifically, the other five non-judicial members of the Supreme Judicial Council are elected by the Parliament by at least three fifths of votes of the total number of Deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge. The Judicial Code prescribes incompatibility requirements for the members of the Supreme Judicial Council elected by the National Assembly. According to Article 83 of the Code, a member of the Supreme Judicial Council elected by the National Assembly may not engage in political activities, hold any office in state or local self-government bodies, a position in commercial organisations, engage in entrepreneurial activities, or perform paid work, except for scientific, educational, and creative work. The remuneration of a member of the Supreme Judicial Council shall be prescribed by law, and it may not be less than the remuneration of a judge of the Court of Cassation.

According to the civil society, the requirements regarding the composition of non-judiciary members of the Council are good, including proper legal qualification, but the procedure for their selection is not transparent procedure or based on merit. Indeed, the process is regulated by article 144 of the Constitutional Law on Regulations of the National Assembly, where factions in the National Assembly have right to present candidates. There is no clear procedure as on how the factions shall select candidates, this process is not transparent. While the CPC is required to prepare its opinions regarding the candidates, its opinion is consultative, and not mandatory, it is not made public .The civil society claims that the election of non-judge members of the SJC has been so far much politicized, quoting the very recent election of a non-judge member. The candidate in question has been long perceived by the general society as a contributor to the criminal impunity in armed forces. Despite the professional capacities, his election was not welcomed by the society.

Benchmark 5.5.5.

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

The Supreme Judicial Council is responsible for the selection, promotion and transfer of judges of the first instance courts and courts of appeal. Evaluation of judges is conducted by the Evaluation Commission (article 139, Judicial Code), which is formed by the General Assembly of Judges (article 77, Judicial Code).

According to Article 139 of the Judicial Code, performance evaluation of judges is carried out by the Commission for Performance Evaluation of Judges on the basis of the criteria prescribed by the Code. The Supreme Judicial Council prescribes the methodology of the performance evaluation, the procedure for collecting data necessary for the evaluation and other details necessary for the performance evaluation of judges, and the regular timetable of the performance evaluation. This Commission was established in August 2020 and has become functional in June 2021. It has already evaluated judges of the Court of Cassation. While the government explained that the content of judgments is not evaluated, but only formal requirements defined by law, including mostly quantitative indicators, the civil society is of the view that this Commission may have too much power, as it might be evaluating professional decisions made by judges.

According to Article 141 of the Judicial Code, disciplinary actions against judges may be imposed by the Supreme Judicial Council. Article 144 of the Code prescribes that disciplinary proceedings against a judge can be initiated by the Ethics and Disciplinary Commission, the authorised body and the Commission for

the Prevention of Corruption, in respect of the violation of the rules related to declaration of the property, income and interests. The civil society noted that the decisions of this Commission are not public.

According to Article 32-33 of the Judicial Code, a judge, the chairperson of a court of first instance, chairperson of a court of appeal as well as the chairperson of the Court of Cassation, shall in the case of discovering any prima facie violation of the code of conduct by a judge of their court, as well as by the chairperson of a chamber of the Cassation Court thereof, report it to the Ethics and Disciplinary Commission.

The monitoring team concluded that the rules that provide the SJC with the responsibility for selection, promotion, transfer, evaluation and discipline of judges meet the requirement of the benchmark in relation to the first instance and appeal courts. However, it heard views from non-governmental partners that there are certain traditions that work in practice, e.g. some judges would not ask for promotion as they know in advance that they will not get enough votes in the SJC for personal and not professional reasons. Moreover, the monitoring team was concerned that important elements of the career in the Cassation Court - including the appointments of judges and presidents of this court – are in the hands of the Parliament, as discussed under benchmark 5.3.1.

The role of court presidents has been significantly reduced recently, and they do not play a role in the judicial career, as required by this benchmark. At the same time, during the virtual visit, representatives of the judiciary noted that the SJC sometimes acts without proper consultations with other parts of the judiciary. For example, there was a case where the SJC decided to transfer a judge from one court to another without any consultations with the presidents of these courts about their needs; indeed, the law does not require such consultations. There was another case when the SJC refused to consider a request from a court regarding a judge who was living too far from the court to which he was assigned. Some judges interviewed during the virtual visit suggested that court presidents should be elected by the general assembly of judges or the judges of a given court, and not by the SJC. These incidents indicate a certain resistance between the SJC and specific courts and their presidents.

Benchmark 5.5.6.

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

Civil society representatives and international partners, interviewed during the virtual visit, shared the perception that the Supreme Judicial Council does not yet operate independently or impartially, and does not enjoy public trust. The monitoring team has heard views that the composition of the Council is politicised, and that the process is not transparent, including allegations about political pressure during the elections of SJC members in 2019, when one candidate the SJC, who had been nominated by the leading party and had extraordinary qualifications and experience, was not elected by the Parliament. Similar problems were reported during the SJC elections in August 2020.

According to the civil society, the CPC opinion was not taken into account during that process; this opinion remained closed to the public. At the same time, civil society noted that the Council was trying to ensure its independence from the executive, and that it was under pressure from the new government that aims to renew the judiciary.

The fact that half of the members are being elected in the Parliament and their candidacies are being presented by political factions in non-transparent process, it leaves serious concerns about politicization of the Council. Though the election procedure was transmitted from the Parliament and the QA sessions of candidates were public, the overall process lacks transparency. It is not clear how candidates are being chosen, based on which criteria, how their professional abilities and input to the judiciary are being assessed. The QA process at the Parliament sometimes becomes politicized because of the nature of questions raised by deputies. In 2019, a CSO "Protection of Rights without Borders" conducted research on Judiciary and interviewed experts anonymously; the experts raised many concerns about impartiality of the Council.

On the other hand, civil society has a perception that the current Government considers that part of the judiciary remains loyal to former regime and, therefore, aims to renew it as fast as possible. The President of the SJC on many occasions made public statements showing full independence and commitment to ensuring the independence of the judges. This may explain why the current president of the Council is suspended due to a case that has – in the view of civil society - a political motivation. Moreover, the initiation of certain disciplinary proceedings by Ministry of Justice against certain judges involved in politically sensitive cases provided political pressure on the SJC. However, according to the government, in most cases SJC turned down the Ministry's motion on disciplinary actions against judges.

No studies were conducted on a broader scale to assess public perception of the independence and impartiality of the Supreme Judicial Council in 2020 to allow any further analysis.

Benchmark 5.5.7.

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

According to Article 90 of the Judicial Code, the sessions of the Supreme Judicial Council are closed to the public, unless the Supreme Judicial Council renders a decision on holding the sessions open to the public. In the case of acting as a court, the Supreme Judicial Council shall hold sessions open to public, except for the cases when, based on the motion of a member of the Supreme Judicial Council or a judge, upon the reasoned decision of the Supreme Judicial Council, they are closed to the public in order to protect the privacy of the participants of the proceedings, the interests of justice, as well as national security, public order or morality. The Judicial Department prepares the meetings of the Supreme Judicial Council, its agenda, time and venue, materials regarding the issues included in the agenda.

Representatives of the Council during the virtual visit noted that recently there was only one closed session that was about a health issue of a judge. Civil society representatives confirmed that information about the sittings of the Council and its agenda is publicly available at the official webpage www.court.am , as per the Decision of the Supreme Judicial Council no. 2-N-1 on the Rules of Communication of Supreme Judicial Council and Courts with the Representatives of Mass Mediaof 11 January 2019. These announcements also clarify which parts of the meeting are open to media and public.

Even if the practice is more open than the regulation, this does not comply with the benchmark, as proceedings should be open, at least to the media and civil society representatives.

Decisions of the Council are published in a depersonalised manner, as provided by Article 94 of the Judicial Code. They are published on the official website of the judiciary, except for the decisions containing a

secret protected by law. A representative of the SJC during the virtual visit further confirmed that the disciplinary decisions are published with justifications, while decisions about promotions do not contain such justifications.

Publication of decisions are useful, especially regarding disciplinary cases, as judges can read this information to learn from these experiences, as confirmed during the virtual visit. However, publication of depersonalised information does not allow for public scrutiny. Besides, the civil society noted that information is published in an unregularly manner, sometimes immediately after the proceedings, and sometimes with important delays.

Benchmark 5.5.8.

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

The Judicial Code establishes conflict of interest rules for judges, including for members of the Supreme Judicial Council. According to Article 66, these rules also apply to the members of the Supreme Judicial Council elected by the Parliament. Point 7, part 2 of article 70 of this Code "Rules of Conduct of Judge while acting ex officio" stipulates that: "While acting officially judge is obliged: 7) Not to let conflict of interest, exclude any impact of family, societal relationships or relationships of another nature, on implementation of his/her official powers". The definition provided in the Judicial Code is narrow and does not comply with the international standards; importantly it does not cover interests outside of judicial activities of judge.

More specifically, the Judicial Code provides the following grounds of incompatibility:

Article 5. Incompatibility requirements for the activities of judges

- A judge may not hold any position not stemming from his or her status in state or local self-government bodies, any position in commercial organisations, engage in entrepreneurial activities or perform other paid work, except for scientific, educational, and creative work.
- Regulations prescribed by law for public servants with regard to entrepreneurial activities shall apply to judges.
- A judge must endeavour to manage his or her input in such a way as to minimise the number of cases in which he or she has to recuse himself or herself.
- A judge may occupy a position in a non-commercial organisation, if:
  - his or her activities in such position are performed gratuitously, and
  - that position does not imply disposal of funds, entering into civil law transactions on behalf of the organisation, or representation of the organisation before state or local self-government bodies.
- A judge may not act as an executor of a will or property trust manager, except when he or she acts so gratuitously in connection with a property of his or her close relative or that of a person under his or her guardianship or curatorship.
- Within the meaning of this Code, a close relative shall mean:
  - the judge's spouse;
  - the judge's or his or her spouse's parent;

- the judge's or his or her spouse's child, the child's spouse, full or half (paternal or maternal) brother, sister, grandfather, grandmother, grandchild, great-grandchild;
- the judge's or his or her spouse's brother's or sister's spouse, child;
- the judge's or his or her spouse's adopter or adoptee.

Article 71 of the Judicial Code provides procedures for self-recusal of a judge in cases that can influence his or her impartiality. Representatives of the Armenian judiciary interviewed during the virtual visit were aware of one recent case, when a judge resigned due to the conflict of interest, notably as this judge decided to join a political party. According to the civil society, there is a strong perception in the country that judges are politically connected. In 2020, there were no cases of violation of the conflict of interest rules reported by the SJC. In 2021, there was a case when a member of the SJC received a gift card that could be in violation of these rules, no outcomes of this case were known at the time of the virtual visit.

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

Assessment of compliance

Cases are distributed among judges using an automatic computer system. However, there are concerns that this system is not used when allocating politically sensitive cases. The SJC decides on specialisation of judges, that is used as a criteria in the automatic system; it also has the right to personally select judges who sanction arrests and other special investigative means. This gives the SJC many possibilities to override the automatic system. According to new legal provisions that entered into force in July 2021, special judges will be selected to hear only the cases on detention, arrests and other instigative means. Such cases will be automatically allocated between these new judges. These legal provisions and their implementation will be examined under the next round of monitoring. All decisions made in open court proceedings are published online.

Benchmark 5.6.1.

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

According to the Judicial Code Article 41, distribution of cases among judges is carried out through a special computer program. At the time of the country visit, distribution of cases was guided by the SJC's decision SJC-23-R-49 of July 9, 2018, which established the rules, criteria and procedure for equal distribution of the cases, redistribution, the rules of formation of collective court judges and appropriate quantity of cases by percentage transferred to the judges. The case distribution is done on the basis of principles of coincidence, availability, specialisation and privacy peculiarities. The information on the case and its progress is published on the official website of the judiciary. Where the distribution of cases through the Computer Program is impossible due to force majeure, the chairperson of a court shall equally distribute the cases among the judges in alphabetical order of the surnames of the judges. Distribution of cases that require operative investigative measures is carried out by the chairman of the relevant court. A new decision of the SJC on these matters was adopted on March 25, 2021, and will be examined in the next round of monitoring.

According to the civil society, the study of the practice of case distribution conducted by the PRWB in 2018 has shown that the volume of distribution of cases is still problematic as the equality between judges workload is not being insured and judges continue being overloaded by cases. Besides, there are allegations that were assigned outside the automated system. For instance, according to the media, a criminal case that involved the former President was not assigned based on a procedure provided by the law.

The civil society also mentioned that the electronic system of distribution of cases was used by the National Security Service in the frame of an opened criminal case, and the assignments to judges were done manually during that time.

The monitoring team concluded that while, overall, case distribution is automatic and this system largely works, there is public perception that some politically sensitive cases are allocated outside this system. More worrying is potential for manipulation of the system of random distribution of cases through specialisation of judges that is decided by the Supreme Judicial Council. The Council also makes the personal selection of judges who are responsible to give sanctions for special investigative means, such as arrest, which is also a very sensitive issue, especially during the times of revolutionary change of powers and military situations.

Benchmark 5.6.2.

All judicial decisions delivered in open proceedings are published online

According to Article 11 of the Judicial Code, judicial acts concluding the proceedings at the relevant judicial instance and, in cases provided for by law or by the decision of the Supreme Judicial Council, also other judicial acts shall be subject to mandatory publication on the official website of the judiciary. Where the judicial proceedings, or part of them, are held behind closed doors, the concluding part of the conclusive judicial act shall be published on the official website of the judiciary, provided that said concluding part does not contain a secret protected by law. In cases provided for by law, the concluding part of the judicial act shall be disclosed also at the court session.

Judicial acts containing data on private life, personal biometric and personal special category data, as well as personal data on a child, shall be published on the official website of the judiciary in a depersonalised manner. The Supreme Judicial Council may prescribe other cases of depersonalisation of personal data.

Everyone shall have the right to become familiar with a completed court case with regard to which a conclusive judicial act has entered into force. A person or their representative may become familiar, in the manner prescribed by law, with any part of judicial proceedings held behind closed doors or with a secret protected by law or an undisclosed or partially disclosed judicial act upon the decision of the court having rendered the judicial act. The court shall make such a decision where the judicial act, prima facie, relates to the rights or obligations of the applicant. The person and their representative in question shall be warned of the liability for disclosing a secret protected by law and using it in violation of the prescribed procedure, in acknowledgment of which they shall put their signature.

Unless it contains a state or official secret, a decision rendered by the Court of Cassation concluding the examination of a cassation appeal accepted for proceedings shall be published also in the manner prescribed by law for publishing the secondary regulatory legal acts.

Non-governmental representatives interviewed during the virtual visit were not aware of any cases where the above rules were not implemented.

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

Assessment of compliance

Disciplinary sanctions against judges can be imposed by the SJC, and presidents of courts do not have a role in these procedures, judges have sufficient guarantees of fair process, there is no punishment for judicial decisions, disciplinary sanctions are published online – these provisions are compliant with the benchmark. However, the following shortcomings are not compliant: grounds for disciplinary liability of judges include unclear provisions, which may be abused; there is no possibility to complain about judge's discipline directly to the SJC; Ethics and Disciplinary Commission and the Ministry of Justice do not share common understanding of grounds and procedures for disciplinary proceedings.

Benchmark 5.7.1.

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

Disciplinary proceedings against judges can be imposed for the failure to comply with the Rules of Judicial Conduct and for violation of the norm of substantive or procedural law in the exercise of their powers, committed with intent or gross negligence. Article 142 of the Judicial Code provides the grounds for imposing disciplinary action against judges. Some of these grounds contain unclear provisions that can be misinterpreted and abused. For example, point 2 of the Article prescribes the following: *"An act shall not be deemed to be a disciplinary violation, where, though it formally contains elements of grounds for subjecting a judge to disciplinary liability, as prescribed by this Code, however, due to its less importance, it casts no doubt as to complying, by this judge, with the status of a judge and may not, as to its nature, dishonour the judiciary."*

As noted under Benchmark 5.1.3, the process of judges' dismissal is provided in the Article 159 of the Judicial Code. The grounds for dismissal include violation of incompatibility requirements, political activities, physical incapacity for work. Besides, the powers of judge also can be terminated. According to Article 149 of the Judicial Code, the SJC may impose termination of powers on the ground of an essential disciplinary violation, which involves serious violation of human rights.

As noted under Benchmark 5.5.5, according to Article 141 of the Judicial Code, disciplinary action against judges may be imposed by the Supreme Judicial Council. Article 144 of the Code further provides that disciplinary proceedings against a judge can be initiated by the Ethics and Disciplinary Commission (which includes 6 judges and 2 representatives of CSOs), the authorised body (i.e. Ministry of Justice), and the CPC - in respect of the violation of the rules related to declaration of the property, income and interests.

According to the civil society, there is a new regulation providing the citizens a right to appeal to the Supreme Judicial Council, which was debated by the Parliament, but was vetoed by the President. The Government confirmed that in 2021 legislative amendment was adopted allowing all persons to apply directly to SJC for initiating disciplinary proceeding against judges, however, Constitutional Court declared

the mentioned legislative amendments as unconstitutional. Any follow-up will need to be studied in the next round of monitoring.[16]

In 2020, the Ministry of Justice initiated 14 disciplinary cases against judges: 11 of them were satisfied by the SJC and 3 were rejected. In 2020, the Ethics and Disciplinary Commission received 119 complaints. It was noted by the representatives of the judiciary that the Ministry of Justice and the Ethics Commission have different understanding of the grounds for disciplinary procedures. The research, conducted by PRWB in 2018 and 2020, showed that the grounds are not clear enough and give place to vague and abstract interpretations in practice.

Therefore, grounds for disciplinary liability and dismissal contain unclear and discretional provisions described in the first paragraph. The monitoring team believes that, while it is impossible to exclude discretion completely from such rules, the focus should be given to ensuring the proper use of these rules in practice. For this reason, future monitoring of this benchmark should be based on specific cases of application of these rules. Regarding the procedure, no direct complaints can be made to the Supreme Judicial Council about disciplinary failures of judges. Complaints can only be made through 3 channels, including the Ministry of Justice, which also has the power to initiate a disciplinary procedure, which is not a good practice.

Benchmark 5.7.2.

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

Stakeholders interviewed during the virtual visit did not raise any specific concerns regarding the application of the disciplinary and dismissal procedures against judges. However, some of them stressed that discipline of judges is a very sensitive issue due to the mixture of political and business interests, and judges prefer not to disclose such information outside the judiciary.

The monitoring team is of the view that this is due to the non-transparent nature of the system; there are no direct channels to complain about the discipline of judges to the Council.

The Government further clarified that the Judicial Code clearly states who can initiate disciplinary proceedings against judges and then bring case for the consideration of the SJC. Specifically, the mentioned bodies are Corruption Prevention Commission, Ministry of Justice and Ethics and Disciplinary Commission of Judges. The Government is, therefore, of the opinion that, as the possibilities to bring the case before SJC are envisaged by Judicial Code, transparency or non-transparency does not have any relation to granting any kind of access to SJC.[17]

[16] Azatutyan (2021), Armenian President Objects to “Unconstitutional” Bill on Courts.

[17] The channel of SJC on Youtube, https://www.youtube.com/channel/UCS2v3pfYQ_925Tvlp-Nfb5Q , and examples of media broadcasting https://www.youtube.com/watch?v=2wYjDT9E-Sc ; https://www.youtube.com/watch?v=bH247RWQqwE .

According to one of the anonymous experts interviewed by an NGO “Protection of Rights without Borders” for their 2019 report, this expert sent 10 complaints related to the disciplinary violations by the judges. However, the Commission rejected them all and did not provide any reasoning. The civil society representatives believe that Commission should pay more attention to complains from the citizens, especially due to the fundamental distrust towards the judiciary, where the absolute majority of judges took their positions before the Velvet Revolution.

Benchmark 5.7.3.

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

As noted under Benchmark 5.5.5., according to Articles 32-33 of the Judicial Code, a judge, the chairperson of a court of first instance, chairperson of a court of appeal as well as the chairperson of the Court of Cassation, shall in the case of discovering any prima facie violation of the code of conduct by a judge of their court, as well as by the chairperson of a chamber of the Cassation Court report it to the Ethics and Disciplinary Commission.

Armenia does not meet the requirements of this benchmark, as only the Ethics and Disciplinary commission deals with the disciplinary proceedings of judges.

Benchmark 5.7.4.

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

Article 153 of the Judicial Code provides guarantees for judges in the disciplinary proceedings, including the rights to get familiarised with the materials, which served as a ground for the proceeding, ask questions, file objections, give explanations and file motions, submit evidence and participate in its examination; participate in the session in person and through an advocate; receive compensation for reasonable remuneration rendered to the advocate.

Article 156 part 1 of the Judicial Code provides judges with the right to appeal against the decision on subjecting him or her to disciplinary liability to the SJC, which will examine it at the court session within a period of one month following the receipt of the appeal. The decision of the SJC is final.

Armenia has all procedural guarantees of due process in disciplinary proceedings. These include the right to be heard and to employ a defence, the right of appeal, and other guarantees. The monitoring team did not receive any information about the use of these guarantees in practice.

Benchmark 5.7.5.

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

As noted under Benchmark 5.7.4., the decisions regarding judicial discipline enter into force upon their publication. Article 155 of the Judicial Code establishes requirements for publication of these decisions. Publications require the publication of "descriptive-reasoning part of the decision of the Supreme Judicial Council", which includes the description of circumstances, positions of the judge in question, explanations and testimonies of witnesses, evidence considered by the SJC and reasoning of its decision.

Representatives of the judiciary confirmed that they read these decisions, when published, in order to learn about the practice of disciplinary responsibility.

The civil society representatives confirmed that the final decisions on disciplinary liability of the Supreme Judicial Council are published at https://court.am/hy for free.

Benchmark 5.7.6.

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

Judges are not criminally or administratively liable for judicial errors or miscarriage of justice. However, according to the civil society representatives, in practice there was a case when a judge was subjected to disciplinary liability and criminal case was opened against him which, according to his lawyers, was related to the politically sensitive case that involved the former President. The criminal case was terminated by the First Instance Court due to the lack of corpus delicti.

Benchmark 5.7.7.

Proportionate and dissuasive disciplinary sanctions are routinely applied to judges

The monitoring team had difficulties assessing this benchmark, as very little information is available about disciplinary sanctions applied to judges. While the range of sanctions provided by Article 149 of the Judicial Code is satisfactory and includes warning, reprimand, prohibition of promotion, dismissal from the position of a court president and termination of powers, the government only informed the monitoring team that "for the previous calendar year there have been two cases of dismissals of judges". The government further reported: "Currently there are 4 cases of criminal sanctions against judges." It further confirmed that two cases were finalized, including cases Number ԱՎԴ1/0024/01/17 and Number ԱՎԴ1/0024/01/17, which were initiated by the Special Investigative Service on the grounds of bribery; and two other cases are still ongoing, including cases Number ԿԴ/0013/01/19 and Number ԳԴ4/0021/01/17 that were initiated by the National Security Service and by the Special Investigative Service, respectively, on the grounds of bribery.

The civil society also raised concerns about lack of information about the matter. They also quoted one illustrative case that showed leniency of the Supreme Judicial Court in applying disciplinary sanctions in

2020. In that case, a judge of the first instance court released a dangerous suspect from arrest and allowed him to leave Armenia for allegedly receiving medical treatment, while no evidence was provided to that end. The Supreme Judicial Council exercised a reprimand against him.

Civil society experts also examined six disciplinary decisions, made by the Supreme Judicial Council in 2019, and found that in some of these cases the sanctions were not proportionate. For example, in the first case a former judge of first instance court of general jurisdiction made manifestly violations of the procedural law, but the Supreme Judicial Council found that it was not manifestly gross violation and did not apply any sanction. During the same year, the powers of the same judge were terminated by the Council for another decision in another case.

The civil society further referred the studies conducted by the PRWB in 2018 and 2020, which reveal that there is no proportionality test applied by Supreme Judicial Council towards the misconduct; sanctions applied are not grounded and reasoned.

Benchmark 5.7.8.

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

The government provided limited statistics regarding the investigations of public allegations of corruption of judges. Four judges were charged with corruption cases investigated in 2019; one criminal case with regard to one of them was sent to court with an indictment in 2019. Two criminal cases with regard to two of them were sent to court with indictments in 2020, one criminal case was suspended in 2020 on the grounds that the person, who must be presented as the accused, escaped from investigation or trial. No data was provided regarding the number of such allegations, and about the number of investigations which were open on their basis and which were closed.

Based on the discussions with the civil society, the monitoring team formed an opinion that both the prosecution and the police avoid opening criminal investigations against judges, especially for corruption, as they do not want to spoil relations with judges. Besides, the monitoring team did not see information about number of cases initiated against judges, and continuation of these cases or their dismissal. The same problem is observed about high-level officials. Politisation of the judiciary, and of the society at large, is the key reason for this situation. Non-governmental partners noted that while judges are not allowed to be members or the political parties, political preferences of judges are very well known in this small country.

After the virtual visit, Armenia provided the monitoring team with the links to decisions of the SJC regarding 16 disciplinary cases (in Armenian) that were considered during 2020, including translations of 5 of these cases into English. This sample shows that the SJC regularly reviews disciplinary cases and makes careful and balanced decisions, including proportional and dissuasive sanctions.

6 Independence of Public Prosecution Service

The organisation of the Prosecutor General's Office of Armenia is based on a strong hierarchy. Prosecutor General is elected by the Parliament without merit-based or transparent competition; the grounds for dismissal are open to political decisions. There is no prosecutorial governance body in Armenia that would protect prosecutors' autonomy. Their selection and promotion is not based on merits either and is in discretion of the Prosecutor General. Cases are allocated among prosecutors by their line managers. Discipline is important in the GPO and disciplinary sanctions are applied regularly, but there are no clear and objective grounds. The GPO had very little transparency. On the positive side, the state budget fully satisfied GPO's funding requests. There is a new department of the GPO that deals with forfeiture of illegal assets that was established with the assistance of international partners, andGovernment is open to further developing this department. Good practices developed in this Department may help implement future reforms of the GPO.

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

Background

The GPO does not belong to any branch of power and has broad and strong mandate, typical to many ACN and Istanbul Action Plan countries. The PGO has a strong centralised hierarchy and little transparency.

Assessment of compliance

The Prosecutor General, who is currently in office, was appointed in 2016, and can stay in this position for 2 consecutive terms of 6 years, i.e. 12 years in total. He was appointed by the former President, based on the nomination by the Parliament. This political decision did not involve any independent bodies of prosecutorial governance or expert committee. Non-governmental partners noted that they consider his appointment was essentially a political decision of the previous President. Grounds for the dismissal of the Prosecutor General are too broad and provide possibility for politically motivated decisions.

Benchmark 6.1.1.

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

The Constitution (Article 177) and the Law on GPO (Articles 33 and 34) establish rules for appointment of the Prosecutor General and other prosecutors. The Prosecutor General is elected by the Parliament (that is the National Assembly of Armenia) by at least three fifths of votes of the total number of Deputies, upon recommendation of the competent standing committee of the Parliament. Each faction can propose one candidate. There are no professional requirements or criteria, established by law, which will be required from candidates to the position of the Prosecutor General. The committee of the Parliament can employ independent experts to review the candidates, but it did not use this possibility during the appointment of the current Prosecutor General. There are no bodies of prosecutorial governance, such as a prosecutorial council or, as an alternative – independent expert committee, in Armenia that would have any role (not to mention a key role) in the process.

According to the civil society, the incumbent Prosecutor General was elected in 2016 by the National Assembly; his candidacy was put forward by former President of Armenia, who had discretionary power in selecting the candidate and putting his candidacy for the vote of the Parliament. The selecting process did not involve any assessment of professional qualities and/or integrity; a body of prosecutorial governance or an independent expert committee did not participated in the appointment procedure.

Armenia does not meet the requirements of this benchmark, which aims to promote a merit-based procedure and to minimise political influence over the process of appointment of the Prosecutor General who is in office at the time of the monitoring, i.e. in 2020. This benchmark requires that a body of the prosecutorial governance or an independent expert committee should play a key role in the appointment, review all the candidates for the position and provide their assessment of professional qualities and integrity before the appointment.

The CPC is expected to conduct integrity checks for the future candidates to the position of the Prosecutor General, according to the new rule envisaged by the Law on Prosecutor's Office (Articles 36,38,38.1,39 and 50) and the RA Constitutional Law Rules of Procedure on National Assembly (Article 145, Part 4.1).

Benchmark 6.1.2.

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

According to Article 177 of the Constitution, the Prosecutor General is elected for a term of six years. The same person may not be elected as a Prosecutor General for more than two consecutive terms (that is 12 years in total consecutively). For the benchmark to be met, the primary law or the country`s Constitution should explicitly provide that a person can be appointed to the position of the Prosecutor General only for one non-renewable term of office. Therefore, Armenian legislation does not meet the requirements of this benchmark.

Benchmark 6.1.3.

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

The Prosecutor General can be dismissed by the Parliament. Some of the grounds for the dismissal of the Prosecutor General established in the Law on Prosecutor's Office (i.e., paragraph 3, points 2 and 4 of Article 63) are formulated too broadly and vaguely, and do not correspond to the requirement of objectivity, as they leave discretion to the decision-making body and provide scope for political interference. According to the mentioned provisions, the powers of the Prosecutor General may be terminated (by three fifth of the MPs), if he/she has committed a violation of the law or of the rules of conduct of prosecutors, which has impaired the reputation of the Prosecutor's Office, or there are other insurmountable obstacles to the exercise of his/her powers.

Besides, dismissal from office is one of the disciplinary sanctions applicable to prosecutors, according to Part 1, Point 5 of the Article 54 of the primary Law. Commission on Ethics can apply disciplinary sanctions to the prosecutors in case if ethics rules are violated. However, it is not clear from the provisions of the primary Law if the Commission can carry out disciplinary proceedings and have any role in the process of application of dismissal that are applied as a disciplinary sanction to the Prosecutor General. During the virtual visit, representatives of the GPO also confirmed that there are no clear rules in this respect in the legislation.

In addition, the monitoring team did not identify legislative provisions, which clearly provide for publication of information about the outcomes of different stages of dismissal process and its final outcome.

Armenia is not complaint with this benchmark, which requires the grounds for dismissal that are narrowly and clearly defined, and are based on objective facts and not political or personal preferences, or that are leaving excessive discretion. The primary law should also regulate the main steps in the process of dismissal of the Prosecutor General and provide for publication of information about the outcomes of different steps of dismissal procedure, and its final outcome.

Benchmark 6.1.4.

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

The current Prosecutor General is in office since 2016, he was elected by the Parliament that was in place before the recent political changes. Civil society stakeholders deem his appointment to be a political decision of the previous President of the country. The process of appointment of the incumbent Prosecutor General did not involve a transparent and merit-based procedure. There were no cases of dismissal of the Prosecutor General of Armenia over the past 3 years.

The government expressed their concern about the objectivity of this benchmark. However, the reference to the views of non-governmental partners is a standing practice of ACN.

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

Assessment of compliance

The primary law contains only general provisions regarding the appointment and promotion of prosecutors; procedures are provided in the Order of the Prosecutor General. Selection of candidates for the appointment of prosecutors is done through an open competition based on merits, the announcement of the competition is published on the GPO's website. However, the final appointment is in full discretion of the Prosecutor General. Promotion procedure is not competitive or merit-based. The Prosecutor General can pick prosecutors for promotion from the list prepared by the Qualification Committee and can insert his own candidates. Besides, according to the information provided by the civil society, during the recent recruitment there were candidates who received negative conclusion of the CPC, but have been appointed nevertheless.

Benchmark 6.2.1.

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

According to Article 33 of the Law on the Prosecutor's Office, as well as the Order of the Prosecutor General on Establishing the Procedure for Organizing Open and Closed Competitions to Supplement the List of Prosecutor's Ccandidates, any citizen of Armenia from 22 to 65 years old can be appointed as a prosecutor, if he or she has a legal degree, is fluent in Armenian language, meets restrictions provided by Article 34 of the Law, and received training in the Justice Academy.

Article 38 of the Law on the Prosecutor's Office regulates both open and closed competitions. The competition is held by the Qualification Commission usually once a year, every January. A closed competition of candidates may be held during the year to replenish the list of candidates on the initiative of the Prosecutor General. Article 38 establishes the list of required documents and the specifics of the interviews. The procedure for organizing open and closed competitions is defined by an Order of the Prosecutor General on Defining the Organization of Open and Closed Competitions. The benchmark requires that the primary Law regulates clearly the main steps in the process of recruitment.

The announcements for the competition to become a prosecutor are published on the website of the Prosecutor's Office. The Qualification Commission reviews applications and makes a list of candidates. According to Article 23 of the Law, the Commission is composed of 9 members, including the Head of the Justice Academy, Deputy Prosecutor General, 4 prosecutors and 3 legal academics. The Qualification Commission selects the candidates based on their level of professionalism, professional skills, awareness of the requirements of the fundamental legal acts related to his or her status, his or her personal qualities and merits (self-control, conduct, listening skills, communication skills, analytical abilities, etc.)

The Prosecutor General makes the final selection from the list prepared by the Qualification Commission. He has full discretion in selecting and appointing prosecutors, though candidates who received better scores in the Academy would normally have a priority. There are no clear rules in the primary law that will prescribe how and why the PG decides to appoint somebody from the list. There are no clear grounds for rejecting candidates from this list.

Armenia does not meet the requirements of this benchmark, because while the initial stage of selection of candidates is competitive and includes some merit-based criteria, the final selection is in full discretion of the Prosecutor General, without clear rules and criteria. Rules for recruitment are not set clearly in the primary law.

Benchmark 6.2.2.

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

Promotion of prosecutors is regulated by Article 39 of the Law on the Prosecutor's Office and the Order of the Prosecutor General on Establishing the Procedure for Certification of Prosecutors. The above described Qualification Commission carries out the assessment of all candidates for promotion in the course of regular competency evaluation of prosecutors, or on an extraordinary basis, when the Prosecutor General submits to the Qualification Commission a proposal on including a prosecutor in the promotion list. There are no criteria for the promotion and no rating of candidates; instead, the Commission takes the vote for each candidate. If the number of candidates proposed by the Commission is more that then the number of promotion opportunities, the Prosecutor General decides who will be promoted.

According to the information provided by Armenia after the virtual visit, in 2020, the Qualification Commission submitted positive opinions on 33 prosecutors, and negative opinion on 1 prosecutor. No further details were provided as to the process used for the review of candidates or reasons for the negative opinion.

Armenia does not meet the requirements of this benchmark, as the promotion procedure is not competitive and is not based on merit, and rules for promotion are not set clearly in the primary law.

Benchmark 6.2.3.

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

The last open competition to supplement the list of candidates for prosecutors was announced on November 19, 2020. The announcement is available at https://www.prosecutor.am/am/mn/8006/ , a screenshot was also provided.

As of December 30, 2020, the Prosecutor's Office of Armenia had 412 full-time prosecutor positions. During 2020, 54 state prosecutors were recruited. By the end of the year, there were 58 vacant positions.

The terms and conditions of the open competition are published in the announcement of the open competition. The conditions of the closed competition are defined by the Order of the Prosecutor General on Defining the Organization of Open and Closed Competitions, which is posted on the website of the Prosecutor's Office.

The closed competition is organized to give an opportunity to apply to those candidates who have challenged the decision of the Qualification Commission on rejecting their application in the open competition, if the application has been declared illegal by the court and the relevant open competition is

over. Citizens of the Republic of Armenia, mentioned in Article 38, Part 10 of the Law, who meet the requirements set by the Law and other legal acts for appointment to the post of the prosecutor, also have the right to participate in the closed competition (citizens exempted from studying at the Academy of Justice). The number of persons in the closed competition is very limited.

As for the publication of the final results of the competition, all decisions of the Qualification Commission are posted on the official website of the Prosecutor's at https://www.prosecutor.am .

To summarise, the terms and conditions of the open competition are published in the announcement, and the conditions of the closed competition are defined in the relevant Order of the Prosecutor General, which is published as well. The results of the election and promotion of prosecutors are also published. No transparency is ensured in the “closed” competitions and promotions.

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

Assessment of compliance

The funding requested by the GPO for its functioning has been provided by the budget. Remuneration of the prosecutors is determined by law, but includes one third of bonuses, which – according to the representatives of the GPO – are not discretionary and are perceived as a regular supplement to compensate for a relatively low pay. However, the Prosecutor General has a discretion of granting financial incentives without any clear rules, which can undermine autonomy of prosecutors.

Benchmark 6.3.1.

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

According to the GPO, the Office received the funding that it requested from the government. However, the monitoring team noted that currently the GPO operates under a significant political influence and the only funding cannot ensure its autonomy.

In 2018, the budget of the Prosecutor General's office amounted to AMD 3 944 756.900 thousand, in 2019, AMD 4 888 770.500 thousand, and in 2020, AMD 4 907 182.100 thousand, and coincided with the size of the budget request submitted by the Prosecutor's Office.

The level of funding to the prosecutorial sector has been consistently maintained in the state budget. In 2021, the state funding has registered some increase related to the establishment of the new Department in the PGO dealing with anti-corruption cases.

Benchmark 6.3.2.

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

The amount of remuneration for prosecutors at different levels is defined in the Law on Remuneration for Persons Holding State Positions and State Service Position. Article 52 of the Law on Prosecutor's Office provides additional types and grounds for granting financial incentives. These include discretionary payments, such as monetary award, a gift and an additional paid leave that can be provided by the Prosecutor General, and regular payments for class and rank to those entitled to them.

Average monthly salary of the Prosecutor at the regional level is AMD 452 827, which is around EUR 720, before tax; at the district level, it is AMD 516 531, in the GPO - it is between AMD 546 472 and AMD 590 308. In the overall context of the public remuneration of the country, the salary of prosecutors is amongst the highest rates. However, representatives of the GPO interviewed during the virtual visit stated that the prosecutors are not well paid, and while they are paid better than other civil servants, they are paid less than judges.

The Prosecutor's Office is also provided with a bonus fund in the amount of up to 30% of the salary fund. The discretionary payments may not exceed 30% of the official salary rate. For example, an average share of bonuses and other discretionary payments of the prosecutor in the regions is AMD 55 987 and of a senior Prosecutor in the GPO – AMD 127 328.

All prosecutors regularly receive bonuses, they are not based on performance and there are no rules for providing bonuses. Even through there are no criteria for the payment of bonuses, the authorities assured that bonuses are allocated equally to all prosecutors, except those prosecutors who were subject to disciplinary proceedings (during the period of 6 months) - they are deprived of the bonuses automatically. This system creates a bigger gap between the salary levels than, otherwise, foreseen in the law, as the calculation of bonuses is based on the amount of the basic salary;, thus, prosecutors with higher salaries receive a higher bonus.

Armenia does not meet the requirelents of this benchmark, because of the discretion of the Prosecutor General in distribution of payments without any clear rules or links to performance, which strengthens the hierarchy within the system.

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

Assessment of compliance

Armenia does not have a Prosecutorial Council or another body that would have a mandate and powers to ensure the independence of the public prosecution service. Non-governmental partners perceived the GPO as a centralised and closed institution, led by a politicized person.

Benchmark 6.4.1.

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

There is no single Prosecutorial Council in Armenia, while there are several collegial committees that deal with certain important aspects of the functioning of the Prosecutor's Office.

One of these bodies is the Collegium, established by Article 22 of the Law on Prosecutor's Office. However, the Collegium is not an independent body of prosecutorial self-governance, as required by this benchmark, but an advisory body under the Prosecutor General, which is composed of the high rank leadership of the GPO (ex-officio).

In addition, there are the Qualification and Ethics Commissions, which were established according to Article 23 of the Law on the Prosecutor's Office and play a key role in the process of appointing, promoting prosecutors, as well as bringing them to disciplinary responsibility. While the composition, powers and some decision-making rules of both bodies are defined by the law, their mode of functioning should be established by the Prosecutor General.

All three bodies are set up and function in practice.

Armenia does not meet requirements of this benchmark, as there is no Prosecutorial Council, while some important rules of functioning of the Qualification and Ethics Commissions (e.g., recusal of members of the Qualification Commission, safeguards of fair proceedings etc.) are not defined in the primary law.

Benchmark 6.4.2.

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

As noted above, there is no self-governing independent body of the prosecutors in Armenia.

The Collegium of the Prosecutor's is composed of the Prosecutor General, Deputy Prosecutor General, heads of structural subdivisions of the General Prosecutor's Office and the Prosecutor of the City of Yerevan. Other prosecutors, invited by the Prosecutor General, may attend the sitting of the Collegium without the right to vote.

The Qualification Commission consists of nine members, including the Rector of the Academy of Justice (ex-officio), one Deputy Prosecutor General, four prosecutors and three lawyers-scientists. In addition, in cases related to forfeiture of assets, the Qualification Commission includes two more experts. The Deputy Prosecutor General heads the Qualification Commission. The Prosecutor General appoints all members of the Qualification Commission and additional experts. It is not clear if there are any rules for selecting members of the Qualification Commission, and if they are based on merits.

The Ethics Commission consists of seven members, including one Deputy Prosecutor General and three lawyers-scientists, appointed by the Prosecutor General, and three prosecutors elected by the prosecutors of the City of Yerevan, regional prosecutors, prosecutors of the administrative districts of Yerevan and military prosecutors. Therefore, the majority of members of the Ethics Commission is appointed by the Prosecutor General. The Deputy Prosecutor General heads the Ethics Commission.

According to the action plan, approved by the decision No. 1441-L of the RA Government of 10 October 2019(on Approving the Strategy of Judicial and Legal Reforms of the Republic of Armenia for 2019-2023 and the Resulting Action Plans), it is planned to change the rules of forming the Qualification Commission under the RA Prosecutor General. The rules should change so that a simple majority of the members of the Qualification Commission are appointed through a process that does not involve the participation of the Prosecutor General. A draft law has been developed by the RA Prosecutor's Office and submitted to the RA Ministry of Justice, by which it is proposed to transfer the powers of the RA Prosecutor General, defined by Article 23, Part 3 of the Law, to the Collegium of the RA Prosecutor's Office (e.g.to appoint four prosecutors, three lawyers-scientists, members of the Qualification Commission under the RA Prosecutor General).

Armenia does not meet the requirements of the benchmark, since all members of the Qualification Commission and most members of the Ethics Commission are appointed by the Prosecutor General. In addition, both bodies are headed by the Deputy Prosecutor Generals. Therefore, both bodies may not be deemed independent of the Prosecutor General.

Benchmark 6.4.3.

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

As noted above, there is no self-governing independent body of the prosecutors in Armenia.

All members of the Collegium of the Prosecutor’s Office are prosecutors. Four out of nine members of the Qualification Commission (the Rector of the Academy of Justice and three lawyers-scientists) and three out of seven members of the Ethics Commission (three lawyers-scientists) are non-prosecutorial.

All of them are appointed by the Prosecutor General. There are no rules that would guarantee that non-prosecutorial parts of the Commissions are substantial enough to influence the decision-making of theses bodies.

While Armenia blames that all lay members of both Commissions have an appropriate legal qualification, it remains unclear whether there are any rules for selecting members of the Qualification and Ethics Commissions and whether they are based on merits.

Armenia does not meet the requirements of the benchmark since the participation of non-prosecutorial members of the Qualification and Ethics Commissions is not substantial, as it does not provide the balance between prosecutorial and lay members of both bodies. In addition, no information has been provided to prove that non-prosecutorial members of these bodies are selected through a transparent procedure based on merit.

Benchmark 6.4.4.

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

Non-governmental partners interviewed during the virtual visit had a view that the Prosecution Service in Armenia is a centralized system led by the Prosecutor General, who is a politicized figure. The system itself is under considerable political influence and prosecutorial self-governance is not inherent in it in principle. In light of the findings above (please see findings on benchmarks 6.4.1-6.4.3), it is possible to conclude that there is no Prosecutorial Council and serious flaws exist with respect to the rules of composition and functioning rules of other collegial prosecutorial bodies in Armenia.

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

Background

As noted under the previous indicator, there is no Prosecutorial Council in Armenia. Instead, three bodies established under or by the Prosecutor General are responsible for the functioning of the public prosecution service, including the Collegium, Qualification Commission and Ethics Commission. These bodies themselves do not comply with the requirement of independence – majority of their members are appointed by the Prosecutor General without clear rules or transparency. A new unit was recently created in the GPO to deal with forfeiture of assets of illegal origin. This unit was created with the assistance of international partners and special rules have been developed for this unit.

Assessment of compliance

The Qualifications and Ethics Commissions play an important role in the selection, evaluation, promotion and discipline of prosecutors, where they prepare the decision of the Prosecutor General. Both Commissions are under control of the Prosecutor General, as majority of their members are appointed by him and they are chaired by the Deputy Prosecutor General. Besides, the Prosecutor General has several possibilities to make direct decisions related to prosecutorial careers, like adding names to the list for promotions or putting a prosecutor to an extraordinary evaluation procedure, which may lead to demotion or dismissal. It is worth noting that in case of selection of the prosecutors responsible for forfeiture of illegal assets, the Qualification Commission includes two additional experts, and in case of the Ethics Commission - it has 3 prosecutors elected by the prosecutors themselves. These very limited possibilities for impartiality may give examples for the much-needed future reforms. The performance evaluation of prosecutors is not transparent.

Benchmark 6.5.1.

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

The benchmark requires that decision-making on all issues of the prosecutorial career (including selection, promotion, and transfer) and discipline is assigned to the Prosecutorial Council or a similar independent body of prosecutorial governance. This is not the case in Armenia.

While the Law says that the Qualification Commission plays the key role in selection and promotion of prosecutors, the final decision is made by the Prosecutor General. It is not clear if the Qualification Commission has a role in the transfer of prosecutors.

The Law states that the Ethics Commission plays a key role in bringing prosecutors to disciplinary responsibility, including the Prosecutor General. The monitoring team doubts that the Ethics Commission would in practice risk doing so in case of the Prosecutor General, who appoints the majority of its members.

Moreover, the Prosecutor General of Armenia has full discretion when taking final decisions based on the decisions of both Commissions.

Benchmark 6.5.2.

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

The benchmark requires that decision-making on performance evaluation of prosecutors is assigned to the Prosecutorial Council or a similar independent body of prosecutorial governance.

The Qualification Commission, described under the previous benchmark, is responsible for the competency evaluation or attestation of prosecutors. All members of this Commission are appointed by the Prosecutor General without any detailed criteria or rules for their selection.

The procedure for competency evaluation is provided for in Article 50 of the Law on Prosecutor's Office. This procedure includes criteria that are not clear and objective, as follows:

- An extraordinary competency evaluation of a prosecutor shall be carried out upon the order of the Prosecutor General supported by the reasoned decision of the latter or when the prosecutor wishes so.

Exceptions provided in Article 50 undermine the idea of performance evaluation:

- The following shall not be subject to competency evaluation: (1) the Prosecutor General and his or her deputies; (2) heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, Deputy Military Prosecutors, prosecutors of administrative districts of the city of Yerevan, prosecutors of marzes, military prosecutors of garrisons, senior prosecutors of the General Prosecutor's Office.

The evaluation is conducted in a form of an interview. It is audio-recorded, but the recording is not public. The procedure of competency evaluation does not provide for objective and transparent appeal, as described in Article 50 of the Law:

- In case a prosecutor appeals against the decision on competency evaluation, the Prosecutor General shall take a decision on upholding or rejecting the appeal within a period of five days upon receipt of the appeal. In case the Prosecutor General takes a decision on upholding the appeal, the prosecutor shall undergo competency evaluation within a period of three days upon taking the decision. The decision of the Prosecutor General on rejecting the appeal may be appealed against through judicial procedure.

Benchmark 6.5.3.

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

Agendas, protocols and decisions of the Collegium of the Prosecutor's office are posted on the official website of the Prosecutor's office.

Announcements and decisions of the Qualification Commission are also published on the official website of Prosecutor General's office. However, according to the civil society, this only includes the list of decisions of Qualification Commission without any substantial content.[18]

Decisions of the Ethics Commission are not open for public, but they are published on the internal portal and are accessible for the prosecutors.

Armenia is not complaint with this benchmark, which requires that meetings of the Prosecutorial Council, or such bodies as the Collegium, Qualification and Ethics Commissions are publicly announced, and their agendas are published on-line; that their meetings are broadcasted or the media are allowed to attend them; that all decisions on recruitment, promotion, evaluation, results of disciplinary proceedings with justification are published on-line or can be obtained on request, e.g. by CSOs and international partners.

Benchmark 6.5.4.

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

As noted above, there is no Prosecutorial Council in Armenia. Three other bodies play a role in ensuring the operations of the prosecutorial service, including the Collegium, Qualification and Ethics Commissions. However, the Prosecutor General has the overriding powers on all aspects of their operations. In principle,

[18] Prosecutor General's Office, "List of decisions of Qualification Commission".

provisions of the Law on Prosecution that establish conflict of interest rules should apply to all members of the prosecutorial service.

The Law on the Prosecutor's Office, in the chapter "Rules of Conduct of Prosecutor", article 74 (1.2) provides the definition of conflict of interest that applies to prosecutors: a prosecutor is obliged "not to allow conflict of interest, that his family, societal or relationships of other nature would impact on proper performance of his authorities while acting". Conflict of interest is also mentioned in other parts of this Law, e.g. in point 6, Part 1 of Article 72 it is stipulated: "The prosecutor is obliged to be autonomous and unbiased, be independent from the influence of legislative and executive branches of government and other state bodies and local self-governance bodies, public and political organizations, means of media, private interests, public opinion and other indirect influences, pressures, threats and other interventions, to be free from fear of being criticized". Point 10, Part 1 of Article 73 of the same Law prescribes the following: "The prosecutor is obliged to manifest impartiality, to abstain by his words or conduct from manifesting biases, discrimination or creating such appearance, to act in a way which will not create unnecessary doubts in regard to his/her impartiality and being unbiased, not to be led by guesses, emotions, personal attitude and other indirect influence, which does not prevent prosecutor to freely express his/her opinion in regard to solutions on issues of service".

The definition of conflict of interest, provided in Article 74, is very narrow and falls short of the international standards. References provided in Articles 72 and 73 are declarative and not clear. Besides, the Law does not provide for procedures for managing conflict of interest situations.

Armenia does not meet the requirements of this benchmark, which requires that conflict of interest rules are clearly established in the legislation and there is practice of compliance with these rules during the previous calendar year, i.e. in 2020.

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

Assessment of compliance

The assignment and re-assignment of cases among prosecutors is guided by the hierarchy rather than by clear and transparent rules that aim to ensure impartiality and autonomy of individual prosecutors from external and internal pressure. Prosecutors have no right to challenge orders from their superiors through a judicial or another independent procedure, and they do not use their right to challenge the orders through the internal procedures either.

Benchmark 6.6.1.

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

There are no rules for the distribution of criminal cases between prosecutors in the Criminal Procedure Code. The Criminal Procedure Code defines rules of investigative jurisdiction (Article 190). In accordance with the above rules the relevant legal act of the Prosecutor General defines which structural subdivision of the Prosecutor's Office of the Republic of Armenia will carry out the functions of prosecutorial control

and judicial management over the types of crimes, or which body will carry outthe preliminary investigation. As for the Law on the Prosecutor's Office, it does not contain clear rules for the distribution of cases, but Article 32 stipulates the grounds and procedure for transferring the case from one prosecutor to another.

According to the Order No. 40 of the Prosecutor General of 25 September 2019 on Clarifying the Functions Reserved to the Departments of the Prosecutor General's Office, heads of the Departments, prosecutors of marzers, of the city of Yerevan and its administrative districts are responsible for the assignment of the functions and job responsibilities of their subordinates.

The assignment of cases in the territorial divisions of the GPO is carried out by the heads of territorial divisions, according to the Order of the Prosecutor General of 13 March 2017 on the Distribution of Duties between the Prosecutors in the Prosecution System of the Republic of Armenia. The order is available on the GPO's website. The heads of territorial divisions are responsible to ensure the equal caseload, while also ensuring the specialization of the prosecutors for 3 types of crimes, including crimes against human rights and public safety, crimes against property that cover corruption-oriented crimes, and crimes against the state government, economic activity and environmental safety.

According to Part 2 of Article 32, where the inferior prosecutor has considered the assignment or instruction given by the superior prosecutor as illegal or unjustified and has submitted an objection thereon to the superior of the prosecutor having given the assignment or instruction, whereas the assignment or instruction has been considered as legal and justified thereby, the superior prosecutor may, by his or her reasoned decision, dismiss the inferior prosecutor from the proceedings and transfer the case to his or her or to another prosecutor's proceedings. This ground for reassignment of cases leaves a broad scope of discretion and lacks objectivity, giving potential space for the re-assignments based on personal preferences or undue consideration.

The monitoring team has a view that the assignment and re-assignment of cases among prosecutors is guided by the hierarchy rather than by clear and transparent rules that aim to ensure impartiality and autonomy of individual prosecutors from external and internal pressure.

Benchmark 6.6.2.

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

For this benchmark to be met, the legislation shall clearly set the right of prosecutors to challenge orders of their superiors through a judicial or another independent procedure (e.g., to the prosecutorial council or a similar independent body), and the practice must show that prosecutors routinely used this procedure during the past calendar year. The legislation of Armenia does not provide for a judicial or other independent procedure for challenging orders of superior prosecutors.

Article 32 of the Law on Prosecutor's Service provides for the rules regarding "Mutual relations of superior and inferior prosecutors". These rules establish strong hierarchical system where the superior prosecutors have almost unlimited powers over the interior prosecutors. The rights to challenge orders from superiors are limited to cases when "the inferior prosecutor finds that the assignment or instruction is illegal or unjustified." In these cases, the inferior prosecutor shall "submit a written objection to the superior of the prosecutor having given the assignment, except for the cases where the assignment or instruction has been given by the Prosecutor General."

Representatives of the prosecution service interviewed during the virtual visit informed the monitoring team that during the past two years there were no cases when prosecutors challenged orders from their superiors. They were only aware of one such case that took place in 2017 or 2018, when a Prosecutor in the city of Yerevan cancelled the decision of his subordinate. The subordinate, Senior Prosecutor of the Kentron and Nork-Marash Administrative District, appealed the instruction of the Prosecutor of the city of Yerevan to the Deputy Prosecutor General of the Republic of Armenia, who revoked the instruction. The Court of First Instance made a decision to reject the appeal, which was appealed by the appellant to the Court of Appeal. The case is currently under investigation.

There is no independent procedure for challenging orders from the superior prosecutors. While prosecutors appear to have a hypothetical right to challenge orders from their superiors through a judicial procedure, in practice they do not use even their right to challenge the orders through the internal procedures either.

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

Assessment of compliance

While discipline is very important for the GPO of Armenia, the rules that regulate disciplinary proceedings against prosecutors are not impartial and leave many opportunities for abuse, including grounds for proceedings that are too broad, lack of sufficient guarantees for prosecutors in these proceedings, such as the right to employ a defence counsel. While there were 7 disciplinary proceedings against prosecutors in 2020, information about them is not transparent for the public.

Benchmark 6.7.1.

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

Grounds for the disciplinary liability of prosecutors are established in Article 53 of the Law on Prosecution Service. This article includes a “failure to perform or improper performance of his or her duties” as a ground for the disciplinary liability.

Article 62 of the Law provides grounds for dismissal of prosecutors. Some of the grounds for dismissal are not clear or objective, for example, “committing such an act by which the reputation of prosecution is damaged or it is incompatible with the office of prosecutor”. Others are open for abuse, like “refusal to be transferred to another structural unit of prosecutor’s office if his/her unit got liquidated or reorganized” and “as a result of attestation by the order of Prosecutor General”. Besides, such ground for dismissal as “termination of criminal investigation against him/her for the grounds, which are not connected with justification” puts in question the presumption of innocence and principles of fair trial.

The procedures for application of disciplinary liability and dismissal of prosecutors are provided in Articles 56-57 of the Law and in the Order of the Prosecutor General of5 June 2018 on Establishing the Procedure for Initiating and Implementing Disciplinary Proceedings Against a Prosecutor.

During the virtual visit, representatives of the GPO informed the monitoring team that in 2020, 7 disciplinary proceedings against prosecutors were conducted. As a result, 5 prosecutors were sanctioned, and 2 cases

were rejected. They also noted that, in the recent past, there were no cases of dismissal of prosecutors due to reorganisation or rotation. However, there were cases of resignation after the positions of the prosecutors were lowered in disciplinary proceedings.

After the virtual visit, the GPO provided the monitoring team with the description of a case that involved disciplinary actions against a prosecutor A.M. In April 2020, the position of this prosecutor was lowered as a result of a disciplinary action against him and transferred to the position of the Deputy Military Prosecutor of Garrison #1. Prosecutor A.M. refused to take up the duties, appealed against the disciplinary sanction in court, and refused to take up the lower position. This behaviour led to the second disciplinary action against him, even before the completion of the first procedure, where he was dismissed on the grounds of incompatibility of his behaviour with the position of the prosecutor that discredited the authority of the Prosecutor's Office.

The monitoring team has a view that Armenia is not compliant with the benchmark that requires that the law – and not other regulatory acts - expressly states all the actions or inaction that can result in the liability. The benchmark also requires that grounds are formulated narrowly and unambiguously (avoiding such general formulations as “breach of oath”, “unethical behaviour”, “improper performance of duties”) and that 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 and rights of the prosecutor in questions) are described in law.

Benchmark 6.7.2.

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

Non-governmental stakeholders interviewed during the virtual visit did not have any information about the disciplinary and dismissal procedures in the prosecution service due to lack of its transparency.

Benchmark 6.7.3.

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

The procedures for disciplinary proceedings and guarantees of the due process are provided for in articles 56-57 of the Law, as well as in the Order of the Prosecutor General of 5 June 2018 on Establishing the Procedure for Initiating and Implementing Disciplinary Proceedings against a Prosecutor."

According to Article 56, a disciplinary procedure can be initiated by the Prosecutor General on his own decision or based on the decision of the Ethics Commission on the basis of reports from other prosecutors, public officials, natural and legal persons, and media reports. The Prosecutor General may appoint one prosecutor or a group to examine the facts of the case; it is not clear how they are selected. Department of Organisation, Supervision and Legal Assistance of the GPO may be asked to conduct additional examination. The procedure must start note later that 12 month after the detection of the violation and may not last more than 21 days; however it can be extended, e.g. because of the sick leave of the prosecutor. The prosecutor shall be informed about instituting of proceedings against him or her, and has the right to

learn about the disciplinary violation attributed to him or her, give clarifications and submit additional materials, request the Prosecutor General to change the composition of the group conducting the procedure and have reading access to the materials of the proceedings, except secret information.

Article 57 establishes procedures for the Ethics Commission. The Commission receives the materials of the disciplinary proceeding from the Prosecutor General, and decides, by secret ballot, on the prosecutor's guilt and sanction that should be applied. According to Section IV, paragraph 32 of the Order of the Prosecutor General, the prosecutor under proceeding can be present during the disciplinary proceeding in order to be heard. There is no clear right to employ a defence council and the right of defence in the proceeding. According to paragraph 16 of Article 56, "a prosecutor shall have the right to appeal against the decision on the disciplinary penalty, imposed on him or her, before the court, as prescribed by law." There were no cases when prosecutors appealed against disciplinary proceedings in court.

Authorities assured that the right of prosecutors to be heard is respected in practice. In 2020, there was a case when a prosecutor appealed a disciplinary penalty imposed by the Prosecutor General. The Ethics Commission gave a negative opinion on this disciplinary penalty imposed by the Prosecutor General.

Armenia does not comply with this benchmark, which requires that the law should, as a minimum, provide such guarantees as the right to be heard, the right to employ a defence counsel, and the right to appeal disciplinary decision in court, and that these guarantees are applied in practice.

Benchmark 6.7.4.

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

The final decisions or case summaries regarding discipline of prosecutors are not published online.

Benchmark 6.7.5.

Proportionate and dissuasive disciplinary sanctions are routinely applied to prosecutors

According to the Government, during 2020, 7 disciplinary proceedings have been initiated, 5 disciplinary sanctions were issued, no decision has been made to impose a disciplinary sanction in the other two cases. The applied disciplinary sanctions included 2 reprimands, one severe reprimand, one demotion and one dismissal.

Following these disciplinary proceedings, 2 prosecutors were sanctioned with reprimand, 1 – with severe reprimand, and 1 prosecutor - as a result of 2 different proceedings - was first sanctioned with "demotion by one level" and then dismissed, as he did not show up for work at the position to which he was transferred as a result of application of the first sanction.

The analysis of the brief facts of disciplinary cases and follow-up sanctions allows to conclude that, in most cases, sanctions were proportionate and dissuasive. The case when the applied sanction appears not to be dissuasive is the "demotion by one level" of the Deputy Head of the Department for Corruption Cases at the Office of the Prosecutor General for alleged disciplinary offences of abusing power in the interest of

the close advocate, disclosure of confidential materials to the advocate and alleged official forgery. Only after second disciplinary proceeding (when he did not appear at the place of transfer following decision on the demolition by one level), he was finally dismissed from office. Nevertheless, this cannot change the general conclusion in the light of the applicable criteria that proportionate and dissuasive sanctions are routinely applied.

Benchmark 6.7.6.

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

The prosecutors interviewed during the virtual visit were not aware of any public allegations of corruption of prosecutors. They, however, were aware of one case of corruption that involved a prosecutor back in 2019, but it was not a public allegation. The non-governmental partners interviewed during the visit confirmed that they were not aware of any such public allegations.

7 Integrity in Public Procurement

The public procurement law of Armenia is overall compliant with international standards and good practices. It covers all economic activities of public interest, clearly defines exemptions from competitive procedures, and procurement is open to foreign participants. The e-procurement covers all stages of procurement; the contract implementation stage was included in 2021. At the same time, the overall share of procurement is relatively low in the GDP, and the share of single-source procurement is very high, and amounts to one half of all public procurement value. No sanctions were enforced in 2020 for COI or corruption in public procurement, and there is no system to debar legal persons convicted for corruption. There is also low public trust in integrity in public procurement.

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

Background

In 2020, public procurement represented 9% of the GDP, which is below 12% that is average in the ACN region. The law on public procurement is relatively new and is based on international standards and good practices.

Assessment of compliance

The public procurement law of Armenia is overall compliant with international standards and good practices. It covers all economic activities of public interest, clearly defines exemptions from competitive procedures, and procurement is open to foreign participants. The e-procurement covers all stages of procurement; the contract implementation stage was included in 2021. The share of single-source procurement is very high, and amounts to one half of all public procurement value. There is low public trust in integrity in public procurement. Statistics show good results of the review mechanism, but there is low trust of the society in it.

Benchmark 7.1.1.

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

The primary Public Procurement Law of Armenia is aligned with the plurilateral Agreement on Government Procurement (GPA) of the WTO, which Armenia is a party to. Article 2 of the Law provides for a comprehensive coverage of application of the law in respect of areas of economic activities concerning public interest, including stateowned enterprises, utilities and natural monopolies, as well as the non-classified area of the defence sector.

At the same time, the total value of the public procurement varies according to different estimates, from 3.5% of the country GDP (which is estimated to be equivalent of USD 12.6 bln), according to EBRD sources, to 9%, according to the Armenian government. Similar countries in the region and OECD country average reach around 12% of the GDP. Therefore, the coverage level and level of overall public sector spending had to be clarified during the country visit.

Benchmark 7.1.2.

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

Article 23 of the Law provides for a comprehensive and largely unambiguous description of the limited number of options for exemption from the competitive procedure. It includes situations where it is possible to acquire goods, works or services inly from single source, which is preconditioned by the copyright or other exclusive rights; due to emergency; or during procurement of additional goods from the same source which cannot be separated from the initial purchase but does not exceed 10% of total price of the initial contract, or when procurement is carried out abroad.

Article 20 of the Public Services Regulatory Commission's Resolution No. 273A from August 19, 2020, states cases when utility has the right to purchase directly from the seller, avoiding competitive procedures. In all other cases, the procurement shall go through competitive procedure with clear terms and deadlines.

At the same time, the number and total value of the contracts awarded without competitive procurement procedures represent 54% in number of all contracts and 52% of their total value (according to the EBRD data) or 48% (according to the Armenian government), which suggests that the limited exemptions of the law are regularly abused. The government explained that non-competitive procurement is conducted in sectors with natural monopolies, procurement of fuel, electricity and water supply for hospitals, where competition is not available, and in urgent cases. On the positive side, information about single source procurement is published under the section "Detailed reports" at https://armeps.am/ppcm/public/reports#/report/f89dce4e-1f05-4a66-aa17-c1eff8c6b70e.

Benchmark 7.1.3.

Public procurement procedures are open to foreign legal or natural persons

Article 7 of the Law provides for a clear rule of equal treatment of all participants. According to the PSRC's Resolution No. 273A, on Establishing List of Public Organizations, Setting Requirements for Their Procurements and Procedures for Reporting and Monitoring of August 19, 2020, the procurement bid submitted in English or Russian, shall not be rejected. Utilities place their procurement announcements on their websites and on the central procurement website - www.procurement.am - run by the Ministry of Finance in Armenian, Russian and English.

Armenia is a signee to the plurilateral Agreement on Government Procurement (GPA) of the WTO and a member of the Eurasian Economic Union. By virtue of these agreements, public procurement is broadly open to a large group of countries.

However, borders of Armenia with Azerbaijan and Turkey are closed for more than 25 years, and a tense geopolitical situation in the region may prevent from tenderers from some countries from participation in public procurement in Armenia. Besides, the Law provides for an exemption from this rule through a decision by the Government, where it is necessary to ensure the national security and defence of Armenia.

According to the data provided by the Armenian government, the largest public procurement contracts in 2020 that were awarded to foreign suppliers, involved companies from Russia (Gazprom), Ukraine (Turboatom), Switzerland (law firm Lalive), UAE (customs control equipment), China and France (medical devices from Hunan, La Roche, Sanofi). However, the civil society stressed that this information should be treated with caution, as in the case of mentioned procurements, the procurement items were very specific and they could not be provided by Armenian suppliers. The situation is different in respect to procurement of goods, services and works, where the foreign suppliers compete with local ones.

Benchmark 7.1.4.

Electronic procurement system is functional and encompasses all procurement processes

According to the Government Decision No. 386 –N on Electronic Procurement System of April 6, 2017, all procurement procedures have to be carried out through an electronic system www.armeps.am, which consists of integrated procurement planning modules, e-tenders, e-auctions, contract management, and procurement reporting modules.

Until recent initiatives (adopted by the Parliament in March 2021), the electronic procurement system did not cover contract implementation phase.

According to the civil society, the e-procurement system suffers from frequent failures and no due justifications are provided for these situations, which undermines public trust in the system.

Benchmark 7.1.5.

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

According to the EBRD estimates, the number and total value of the contracts awarded through direct contracting (5 888 contracts in the amount of AMD 121 247 billion) represents 54%in number of all contracts (10 936) and 52% of their total value (AMD 232 837 bln). The Government of Armenia reported that non-competitive procurement included 48% of the total amount of all contracts.

Procurement Plan 2020	Procurement plan by one person 2020	Procurement plan by one person (no competition) in percentage of a total amount 2020	Procurement plan by one person (urgent one) in percentage of a total procurement	Volume of procurement made through electronic systems in percentage of a total procurement 2020
AMD 243 823 026 577	AMD 128 837 741 406	48%	5%	49%

Benchmark 7.1.6.

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

Civil society and business representatives were very critical of the corruption risks in public procurement. They have confirmed that the large systemic corruption in the public administration was removed during the Velvet Revolution. However, they provided various individual facts and anecdotal evidence of companies, connected to the new government, profiting from public procurement, and stressed that a very high share of single-source procurement continues to feed political corruption. One such example was about the recent open single source tender for excise stamps, which was traditionally awarded to the same company. In 2020, a new foreign company tried to enter the market, but it was not selected, and the complaint was reviewed in favour of the previous provider. They stressed that there is wide spread collusion among companies, and while officially there are about 2.4 bidders per contract, in reality the competition is as low as 1.2 bidders per contract.

CSOs mentioned that Government's Decree NO. 526, adopted in May 2017, that provides for e-auctions system (which was not functioning during the virtual visit, but became operational since), provides many loopholes for single source procurement.

TI Armenia conducted a study about public procurement in 2020 and identified the following shortcomings: biased or not clear specifications that target companies; actual selection of bidders who do not comply with specifications; issues with beneficial owners; faulty planning when need for the purchase of certain goods is not clear. The lack of transparency of procurement in the military sector was also highlighted.

Given a large share of the direct contract awards (reportedly undertaken outside the electronic system), a broad use of prescriptive technical specifications, lack of major conflict of interest provisions in the procurement cycle, the observed overzealous compliance approach to evaluation of tenders, as well as lack of coverage of the contract implementation phase, the risks of unfair and non-transparent practices appear to be high. At the same time, the recent legal initiatives may partially mitigate the risks.

There is a need for surveys and other studies of integrity and corruption risks in public procurement in order to assess public trust in the system, and to identify and remove remaining problems.

Indicator 7.2. Procurement complaints are addressed

Background

SIGMA, a joint initiative of the OECD and EU, conducted its assessment of the public procurement system in Armenia. The report published in 2019 was critical about the independence of the complaints mechanism and its independence.[19]

[19] SIGMA (2019), Baseline Measurement Report. The Principles of Public Administration. Armenia.

Assessment of compliance

Statistics show good results of the review mechanism, but there is low trust of the society in it.

Benchmark 7.2.1.

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

Section 6 of the Law on Procurement provides legal framework for the review of public procurement complaints, conducted by the person responsible for examining procurement-related complaints. This person is appointed and dismissed by the Prime Minister upon the proposal of the Minister of Finance.

According to Annex 4 to the Decision No. 706-A of the Prime Minister of 11 June 2018, the complaints review body has 3 posts, including the person responsible for examining procurement-related complaints and 2 assistants, who are appointed as the Secretary to each procedure examination process. According to Part 2 of Article 47 of the Law on Procurement, a person, examining procurement-related complaints, shall be independent from the bidders of the procurement process, including the contracting authorities, as well as state and local self-government bodies and officials, and shall be obliged to be guided solely by the legislation of the Republic of Armenia on procurement and apply it. The decision of the body examining procurement-related appeals can be appealed in the court. The body examining procurement-related appeals does not have separate budget line, the body's costs are included in the maintenance costs of the Ministry of Finance. No information was provided regarding procedures for selecting this person, or for the mechanism for ensuring the body's independence.

The government of Armenia reported that the number of procurement complaints received by the procurement complaints review body was 618 (which represents 5.7% of all contracts or 12.2% of the competitive procurement processes), of which 590 were reviewed and 468 of them forwarded to other state bodies concerned. It is assumed, that 28 complaints are still under review.

Years	TOTAL		
	General appeals	Satisfied appeals	Rejected appeals
2018	220	124	96
2019	231	112	119
2020	226	110	116
TOTAL	677	346	331

It appears that Armenia has a reasonably well working complaint system with a robust trust by the market players. Given the focus of the law on the appeal rights before conclusion of the contract, it is important to note that decisions regarding the use of direct contracts, which exceeds a half of the public procurement, were not appealed in 2020.

The law provides for 20 calendar days for the consideration of the complaint after its receipt. In practice, the average and maximum duration of consideration of complaints is no more than 20 calendar days.

Benchmark 7.2.2.

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

It is reported that the number of decisions, issued by the procurement complaints review body, that were appealed against in court or another appeal body was 61, which represent 10.3%. 10 out of 61 decisions were repealed by court or another appeal body. That seems to demonstrate rather balanced and well-functioning procurement complaint system.

Benchmark 7.2.3.

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

The stakeholders interviewed during the virtual visit did not have detailed knowledge of the complaints mechanism in the public procurement, except for TI that conducted a study in 2020. However, they did not have strong trust in the system in general. They echoed SIGMA's concerns that the review body is not independent, and stressed that it does not review complaints about single source procurement that is the main problem in Armenia. Legislative package was approved by the Government on August 18, 2021 (Decision No. 1340-A), and sent to the Parliament, which considers establishment of a new complaints mechanisms based on international best practices. Specifically, the current system of complaint through persons hearing complaints will be abolished, and the complaint competence will be transferred to the civil courts through simplified and accelerated procedure. The purpose of the mentioned amendment is to ensure more independent mechanisms of procurement complaints.

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

Assessment of compliance

No sanctions were enforced in 2020 for COI or corruption in public procurement. There is no system to debar legal persons convicted for corruption.

Benchmark 7.3.1 – 7.3.2

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 10 000 of contracts		
7.3.1. Track record of sanctions imposed public officials for violations of COI rules in public procurement	-	-	**No points**	**No points**
7.3.2. Track record of enforcement of corruption offences in the public procurement sector with final convictions	1 (under investigation by NSS)	0,34	**No points**	**No points**

Benchmark 7.3.3.

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

According to paragraph 3, Part 1 of Article 6 of the Law on Procurement, " … the following persons shall not be eligible to participate in procurement /…/ 3) those who have been convicted or a representative of the executive body whereof has been convicted — within three years prior to submission of the bid — for financing of terrorism, child exploitation or a crime involving human trafficking, creation of a criminal association or participation therein, receiving a bribe, giving a bribe or mediation in bribery and crimes against economic activity provided for by law, except for cases when the conviction is cancelled or expired as prescribed by law".

There are two shortcomings with the above provisions. First, legal entities are not covered (there is no corporate liability for corruption in Armenia yet). Second, during the virtual visit, the government officials confirmed that the list that is currently used to debar person from public procurement includes only information about unreliable suppliers, and not those convicted for corruption. No statistics was provided on the number of debarred person.

Indicator 7.4. Public procurement is transparent with independent oversight

Assessment of compliance

Key procurement data and indicators are published and regularly updated by the Statistical Committee of Armenia. While information about beneficial ownership is disclosed as a part of the contract, this requirement is limited to competitive processes only, and no information on the beneficial ownership is required for the contracts awarded directly.

Benchmark 7.4.1.

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

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

In accordance with the requirements of the Law on Procurement, contracting authorities publish all the information on procurement processes on the official website www.procurement.am. This includes the following information:

- procurement plans;
- announcements of procurement procedures, invitations, clarification and changes of invitation;
- minutes of the evaluation committee sessions;
- absence of conflict of interests;
- decision to conclude a contract, conclusion of a contract, change made in the concluded contract and the final contract price;
- declaration of failed procurement procedure;
- information on the actual owners of the participants in the procurement process;
- appeals and the results of their review;
- information on contract implementation.

The Law does not seem to require publication of the data regarding the contract implementation.

The Economic Department of the Statistical Committee is responsible for data collection and publication regarding procurement. Like in case of many other governmental sites, access to them is currently restricted from aboard. During the virtual visit, the monitoring experts had an opportunity to see the demonstration of the sites that publish this information, including gnumner.am, armeps.am and eauction.armeps.am.

Benchmark 7.4.2.

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

In accordance with paragraph “b”, clause 2, Part 2 of the Article 28 of the RA Law on Procurement, the data on the natural person (persons) directly or indirectly holding more than 10 percent of the voting shares in a statutory capital of the legal person participating in the procurement process, including bearer shares should be revealed. Also, information on the person (persons) entitled to appoint to or dismiss from office the members of executive body of the participating legal person, or receiving more than 15 percent of profit generated from entrepreneurial activities or other activities implemented by that legal person, and in case

of absence thereof — the data on the head and members of the executive body should be disclosed. Moreover, where the bidder is declared a selected bidder, the information provided for by this sub-point shall be published in the bulletin together with the notice regarding the decision on conclusion of a contract.

Article 28 of the Law on Public Procurement requires beneficial ownership information to be disclosed. However, the requirement is limited to competitive processes only, which suggests that no information on the beneficial ownership is required for the contracts directly awarded, which represent the major part of the public procurement and are much more open to corruption and nepotism risks.

Besides, as discussed under PA 8, information about beneficial owners is currently verified only for the mining sector. According to information provided by the Government, but that was not examined by the monitoring team, since 1 September 2021 economic entities of public services regulatory sector are also obligated to reveal beneficial owners. More information is provided under PA 8.

Benchmark 7.4.3.

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

Publication requirements are provided by the Government Decision No. 526-N (dated May 4, 2017) and by the Minister of Finance Order No. 430-A (dated August 22, 2017). Publication can be done in a paper based (signed and scanned) form or in electronic from (with digital signature).

Data collection and publication regarding procurement on behalf of the Statistical Committee of the Republic of Armenia is carried out by the Economic Department of the Procurement of the Committee. The information is published on the following sites: gnumner.am, armeps.am and eauction.armeps.am. Official procurement bulletin is available online at www.gnumner.am.

For the purpose of the annual procurement report, the contracting authorities submit reports to the authorised body, i.e. the Ministry of Finance. The annual procurement report is published in the bulletin by 1 May of the year. The report contains statistics and data analysis of procurements based on the types, of expenses and savings, statistics on contracts, number of participants of contracts, types of contracts, types of tender procedures, information about rejection of rights to participate in tenders. The report also includes comparison of all the mentioned data with data for the previous years, and statistical data based on the types of the products and services received, etc.

8 Business Integrity

Business integrity is not yet on the anti-corruption agenda of the Armenia's government. The Corporate Governance Code of Armenia is outdated and does not require the boards of companies to manage corruption risks. The new Corporate Governance Code that includes such provisions and control mechanism was prepared 2 years ago, but is still pending approval. Public disclosure of beneficial ownership of companies and limited control of this information is ensured only in the mining sector; a new system of disclosure is expected in 2021. There is a small programme of incentives for compliance with tax and customs regulations; no similar programmes support integrity in the private sector. There are no institutions in Armenia dedicated to receive reports about corruption related concerns from companies and to provide protection to companies' legitimate interests. While civil society studies corruption risks in business operations, these studies are not systematic; their recommendations are not followed by the government. The State did not fulfil its role of an active and informed owner of SOEs and did not ensure the integrity of their governance structure and operations. Only some SOEs undergo external audit, this practice is not regular.

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

Assessment of compliance

The current Corporate Governance Code does not include explicit requirement to the boards of directors of companies listed in the stock exchange to manage corruption risks. The new Corporate Governance Code that includes anti-corruption responsibilities of boards of directors and a system of control was prepared and discussed with all interested parties, it was sent to the Ministry of Justice for final conclusion. Currently, the draft is reviewed based on comments of the Ministry of Justice, soon the draft will be sent to the Prime Minister's Office for further discussion.

Benchmark 8.1.1.

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

The Corporate Governance Code of Armenia was approved by the Government in 2010. It is not mandatory for private companies, though companies listed on the stock exchange are required to disclose information about its implementation on the web site of the exchange. The government representatives interviewed during the virtual visit also stated that companies compliant with the Code have preferences in public procurement and customs procedures, but no details were provided how this works in practice. Since 2021,

the implementation of the Code, including disclosure requirements became mandatory for the SOEs. For instance, the High Voltage Electricity Transmission Systems, one of the key SOEs in Armenia, is expected to operate under the Code, but it does not have its own internal code yet.

Section 2.1. of the Code requires that board members ensure the integrity of the company's accounting and financial reporting systems, including the independent audit; ensure that appropriate systems of internal control, in particular, systems for monitoring risk, financial and accounting control, and compliance with laws and regulations. While these provisions are broad and could include corruption risks, here is no explicit reference to the corruption risks as a part of Board's responsibilities.

This Corporate Governance Code is outdated. A new one was drafted 2 years ago under the leadership of the Center for Corporate Governance of Armenia, a non-commercial foundation, in consultations with the government and with the assistance from the UK and the PricewaterhouseCoopers. The new draft Code includes anti-corruption compliance requirements. However, the discussion of this draft has been slow; the Ministry of Economy created a working group to review the draft. The second phase of consultations started in 2020 with the participation of the financial market, who objected some of the provisions, such as the principles "comply or explain", the requirement to disclose remuneration of the CEOs or to ensure 30% share of women in boards of companies. It appears that they have effectively blocked the adoption of the Code by the government. However, according to the information provided by the government, the draft is currently reviewed based on comments of the Ministry of Justice, and will soon be sent to the Prime Minister's Office for further discussion.

Benchmark 8.1.2.

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

According to the Rules on Securities Listing and Admission to Trading of the Armenia Securities Exchange, *"issuers … listed or applied to listing on the Exchange are obligated to accept and apply at least principles set forth in the Corporate Governance Code"*.[20]

Government representatives interviewed during the virtual visit could not provide clear information regarding the monitoring of the implementation of the Code by the Exchange. Only in case of the SOEs, ministries that own them, e.g. the Ministry of Territorial Administration and Infrastructure, may control their operations through external audits.

The Corporate Governance Code confirmed that currently there is no control over the implementation of the Code, and only one private construction company is disclosing required information on the website of the Armenian Securities Exchange https://amx.am/. The new draft Code includes provisions for the control of its implementation, however, its adoption by the government is currently stalled.

[20] AMX, Regulations.

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

Assessment of compliance

The current system of registration of companies obliges them to provide information about their owners. However, this information is not automatically public, it is not verified and there are no sanctions for providing false information. The government – aware of the shortcomings – launched a pilot for improving beneficial ownership (BO) disclosure in the mining sector. The Ministry of Territorial Administration and Infrastructure verifies information about beneficiary owners, submitted by 38 companies operating in the mining sector, publishes this information in PDF format, and has the right to impose administrative sanctions. The government is planning to complete this pilot and to roll out a new e-system of BO disclosure for other sectors in the next two years. After the virtual visit, in June 2021, Armenia adopted a new legislation in order to roll out an e-system of BO disclosure for other sectors in the next two years. [21] While Armenia has made important actions to improve the BO disclosure, the new legislation is not implemented yet. The next round of monitoring will reflect the implementation process.

Benchmark 8.2.1.

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

The Law on State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs regulates registration of companies in the State Unified Register of Legal Persons, established under the Ministry of Justice. Companies are required to declare their owners when they initially register as legal entities operating in Armenia and whenever they register further changes in ownership. This information is provided in paper form and then entered into the Register in PDF format. This information contained in the State Unified Register is available to the public upon request. It includes the personal information of the owners and an indication of the ground of becoming a beneficial owner.

In order to improve the current system, in 2019, the government has launched a pilot for better disclosure and verification of beneficiary owners in the mining sector in cooperation with the EITI. The information about beneficial owners of those companies is collected by the State Unified Register and is available free of charge to the public at e-register.am. This web site cannot be accessed from abroad due to security concerns, but the monitoring team had an opportunity to verify that the register is indeed operational. The categories of information available here are the following: personal information of the beneficial owner, information about the extent and nature of interests of the beneficial owner, information about publicly listed companies, information about ownership by a State (local community) or international organisation, information about the chain of ownership and the intermediate legal entities therein.

[21] E-Register, Statement on Real Beneficiaries.

Based on the results of the pilot, the new system of registration and online disclosure of information of beneficiary ownership will be extended by 2023 to all legal entities operating in Armenia.

Benchmark 8.2.2.

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

Currently the information about ownership that is included in the State Unified Register of companies is available in paper format upon request. The new electronic system of declarations of beneficial owners was deployed in February 2021. The new software ensures the publication of data in a machine-readable and searchable format for mining companies. It is expected that the other companies will join the new declaration system within two years.

Benchmark 8.2.3.

Beneficial ownership information is verified routinely by public authorities

Under the pilot introduced for the mining sector, the companies listed in the State Unified Register have to submit their declarations to the State Unified Register under the Ministry of Justice and confirm information about their owners once per year. In case of any change in this information, they have to submit updated information within 40 days to the Register. In contrast with the previous regime, the legislation adopted in 2019 allows the State Unified Register to perform certain verification, which is now conducted only under the pilot for the companies in the mining sector.

Under the pilot for the mining industry, the Ministry of Justice that receives annual declarations regularly sends information from these declarations to the Ministry of Territorial Administration and Infrastructure, indicating the organisations whose declarations were defective or did not present certifying documents. In case the information on the real owners of the legal entity is obviously false or incomplete, the Ministry can impose administrative penalties, such as warnings or withdrawal of the licence. The Ministry of Territorial Administration and Infrastructure is responsible for application of appropriate sanctions; however, the verification of this information is in practice done by the State Unified Register. There are 13 staff members in the State Unified Register, who are currently engaged in the verification. The verification is limited to checking personal data in the declarations with the police data base and cross checking legal entity information with data available in the State Unified Register; no checks are done regarding intermediaries and owners abroad. There are around 38 companies in the mining sector, 11 of them received warnings in 2020 after the verification regarding incomplete information about the real owners, and fixed the identified problems.

The new package of laws on disclosure of beneficiary ownership has been adopted in June 2021 and will apply starting from September 2021. It foresees the gradual rollout of the new verification system first to utilities, licensed media and public procurement, and in 2022-23 in other sectors.

Benchmark 8.2.4.

Financial institutions, designated non-financial businesses and professions and other obligated entities under the anti-money laundering legislation have an obligation to identify and verify the beneficial ownership and report discrepancies

The Law on Combatting Money Laundering and Terrorism Financing requires financial and designated non-financial institutions and professions to identify and verify beneficial ownership information, as per the Financial Action Task Force standards.

Articles 8, 9 and 16 of the Law set out the requirements and procedures for identifying and verifying beneficial ownership information. There is no direct requirement to report discrepancies, the latter will be sufficient ground for the reporting entity to analyse such cases as suspicious ones and to reject the transaction based on the Articles 7(2), 16 (5)(2) and 27(1) of the Law.

Once the public register of beneficial ownership is in place, it will serve as one of the mechanisms to ensure the verification of beneficial ownership information.

Benchmark 8.2.5.

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

As noted under benchmark 8.2.3., administrative sanctions can be applied for violations of regulations on disclosure of beneficial owners in the mining sector. There are around 38 companies in the mining sector, 11 of them received warnings in 2020 after the verification regarding incomplete information about the real owners. They fixed the identified problems; therefore, there was no need to apply further sanctions, which may include withdrawal of licence to conduct mining business.

Within legislation adopted in June 2021, amendments were made to the Criminal Code and to the Code on Administrative Offences that foresee sanctions for failing to provide a declaration or providing false or incomplete information about beneficial owners.

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

Assessment of compliance

The government together with the private sector partners provided trainings on compliance to companies and developed a programme of certification of law-abiding taxpayer. These are positive initiatives that can provide a basis for the development of incentives for integrity. At the moment, Armenia does not have such programmes.

Benchmark 8.3.1.

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

in June 2020, the Ministry of Economy, with the financial support of the CIPE and Center of Corporate Governance started new program to improve the perception of anti-corruption compliance in the business community of Armenia and facilitate its implementation. In September-October 2020, the Center for Corporate Governance, in cooperation with the Ministry of Economy, held 5 courses for Armenian business (40 representatives of 30 businesses) on the topic "Corporate ethics and anti-corruption compliance." During the training, the participants also presented current trends in corporate governance, their possible developments in Armenia, international and local experience in anti-corruption law and order, and discussed situational examples. While this is a good initiative, it does not constitute an incentive as such.

The State Revenue Committee introduced a status of "law-abiding taxpayer" that is confirmed by certificates. Disciplined taxpayers, who have not violated the requirements of the tax and customs legislation, can receive a certificate confirming the disciplinary conduct of the taxpayer. The Revenue Committee stated that in 2020, it issued 137 such certificates and that there was a growing demand from companies for these certificates, as they are reportedly taken into account when receiving loans from commercial banks in order to reduce 35% of loan rate. According to the Government, “as of April 2021 there are 40 legal persons with a certificate of “law-abiding taxpayers” with total 169 loans provided by banks”. While this looks like a good initiative that can also be applied to integrity measures, the representatives of the private sector interviewed during the virtual visit were not aware of these incentives.

It was mentioned earlier that incentives for the implementation of the Corporate Governance Code were foreseen in public procurement and in the VAT reimbursement programmes, but no further data was provided.

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

Assessment of compliance

There are several institutions and channels that allow companies to complain about corruption related concerns. Nevertheless, none of them are perceived by the companies as effective and reliable to protect them from corruption related abuses by the public administration. There are no institutions in Armenia that can provide such protection and analyse systemic problems related to business integrity, and present policy recommendations to the government.

Benchmark 8.4.1.

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

Apart from the systems for complaints that exist in various state bodies, such as in the tax service or competition authority, companies can also file their reports about corruption-related violations to the electronic platform for whistleblowers, managed by the GPO. However, as discussed under Indicator 4, this system is anonymous and is not designed to provide protection to the reporting persons.

The Armenian Lawyers' Association also operates a business sector whistleblowing website www.bizprotect.am, which is linked to the Government's site (https://www.gov.am/en/) and the site of the Ministry of Finance (www.procurement.am). While there were several cases when the Armenian Lawyer's Association has forwarded received complaints to the tax authorities, other public officials were not aware of the existence of Bizprotect channel. Representatives of the private sector interviewed during the virtual visit admitted that Bizprotect channel did not become the key tool for private sector complaints, and that none of the available reporting channels are trusted by the private sector.

Private sector representatives noted that immediately after the Velvet Revolution, there was a proposal from the Business Support Office to establish a Business Ombudsman and a draft law was prepared; however, the Human Rights Defender protested, claiming that he already had this mandate. Moreover, the government was hoping that the reform of the judiciary will enable courts to respond to this demand, so the draft was rejected. The private sector representatives expressed the view that while the Public Defender indeed makes efforts to protect interests of entrepreneurs form the human rights perspective, it does not have sufficient capacity to provide protection that business needs. They further noted that membership-based business associations cannot provide such protection either, and agreed that a Business Ombudsman institution is very much needed in Armenia.

Benchmark 8.4.2.

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

Not relevant, as there is no such institution.

Benchmark 8.4.3.

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

Not relevant, as there is no such institution.

Benchmark 8.4.4.

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

Civil society organisations from time to time analyse problems related to business integrity and prepare policy recommendations, for example, research works of Corporate Governance Center of Armenia on the topic “Corporate Ethics. Peculiarities of Armenian Companies”, “Anti-Corruption Compliance handbook”, and others.[22]

Reports, filed by companies on the Bizprotect website – 190 in total - are usually about unequal treatment in public tenders, violations in tax, customs and licencing areas. The government is aware of these issues and is working on improving these areas. However, there is no clear system, where an institution with sufficient access to information, analytical resources and influence could formulate policy recommendations and present them to the government for implementation.

Benchmark 8.4.5.

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

Not relevant, as there are no such policy recommendations.

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

Background

Many SOEs in Armenia were privatised. As of 1 January 2021, the number of joint-stock companies with more than 50% state participation is 168, the management authorities of which are vested in 26 authorised bodies, including 9 ministries. The State Property Fund is responsible for the privatisation or liquidation of companies, and currently manages 15 companies. According to the non-governmental partners, some SOEs are willing to go through corporate governance reform, but lack knowledge and support on how this can be done.

[22]Armenian Lawyers’ Association, Private Sector news

Assessment of compliance

The SOEs, operating in the energy sector, have made several steps to improve their governance and business integrity. In some of them, boards of directors were created, though not through a merit-based and transparent nomination process and without independent members, as required by this Indicator. Their CEOs are selected by the ministry-owners through a competitive procedure, but it is not known if there are clear merit-based criteria. They do not have audit committees yet, but some of them conduct external audit on ad-hoc basis, as required by Multilateral Development Banks (MDBs).

Benchmark 8.5.1.

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

The 9 largest SOEs in Armenia include Armenian Nuclear Power Plant, Yerevan Thermal Power Plant, High Voltage Electric Networks, Armenian Water Supply Company, 3 hospitals, Public Television and Yerevan Metro.

The Law on Joint-Stock Companies and Government Decision about coordinating state property management require that large commercial companies with more than 50% state participation should have boards of directors. The board of directors should be established by the Government and include representatives of the Ministry that owns the company, the State Property Management Committee and 2 representatives from academic institutions. There are no further criteria for the selection of board members. While the Law on Joint-Stock Companies requires that open companies have at least one third of independent board members, this requirement does not apply to SOEs, as they are closed stock companies.

Companies operating in the energy sector are key among the SOEs in Armenia. Some of them, like the Nuclear Power Plant, are implementing loans from MDBs, which may bring in additional requirements to the governance structure. A representative of the Nuclear Power Plant explained that the Board in this company was created based on the Decision of the Government, it is composed of 6 members, including 3 from the Ministry of Territorial Administration and Infrastructure, 1 representative from the private company in the energy sector and 2 academics.

Civil society pointed out that ministries, which own the SOEs, are usually represented on their boards by low-level employees; the work on the board is not paid.

While the monitoring team did not receive information about all the boards of 10 largest SOEs in Armenia, information that was provided is sufficient to conclude that Armenia is not complaint with this benchmark.

Benchmark 8.5.2.

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

SOEs are obliged to have their risk management system in line with the Code of Corporate Governance. However, as noted above, this Code is outdated and does not explicitly require the boards to implement internal controls, ethics and compliance measures to ensure integrity and prevent corruption.

Despite the lack of clear requirement from the government, some SOEs in the energy sector implanted some of the anti-corruption measures, required by the MDBs. However, none of them could demonstrate comprehensive compliance programmes. Examples, provided by the Nuclear Power Plant and the High Voltage Electric Systems, confirmed that they do not have internal codes of conduct.

Benchmark 8.5.3.

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

According to representatives from the Ministry of Territorial Administration and Infrastructure, the Government Decision No. 224, adopted in 2005, introduced competitive selection of CEOs in all SOEs operating in the energy sector. The most recent round of competitions took place in February 2021. Nobody from the interviewed counterparts knows if there are any clear criteria for their selection.

No information was provided regarding the duties of CEOs and their reporting obligations. However, Annex 1 to Government Decision of October 5, 2017 states that the State Entity that owns the SOEs monitors the financial and economic situation of subordinated commercial organisations, based on the information provided by the CEO, suggesting that the CEOs report to the state bodies rather than to the boards. This was further confirmed by the information provided by the High Voltage Electricity Systems.

Benchmark 8.5.4.

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

SOEs are subject to internal audit, according to the Law on Internal Audit". The implementation of this Law is not fully ensured. For instance, the representative of High Voltage Electric Systems noted during the virtual meeting that they did not have internal audit yet, while the representative of the Nuclear Power Plant confirmed that internal audit was conducted on the order to the Minister.

According to the Law on Accounting, there is legal requirement for some SOEs to undergo external audit. More specifically, pursuant to Article 26 of the Law on Accounting, annual financial statements of state joint-stock enterprises are subject to mandatory audit, if the enterprise is large, medium or public interest entity. The indicative list of organisations that are subject to audit is published on the official website of the

Ministry of Finance.[23] All large state joint-stock enterprises are included in that list, i.e. their annual financial statements are subject to mandatory audit. Pursuant to the Law on Audit Activity, International Audit Standards are in force in Armenia; hence, financial statement audits of all organisations are carried out in line with international auditing standards.

Examples of external audit that were provided (in Armenian) suggest that some SOEs conducted external audits in 2020, however, it is not clear if they conduct such audit annually. For example, external audit in the High Voltage Electric Systems and in the Nuclear Power Plant were done by an external audit company, using international standards.

Moreover, the license condition of each of the 10 largest companies has a provision, according to which the licensee is obliged to audit the financial statements of the previous year (annual audit). After receiving the audit report (in case where the annual report must be approved by the general meeting of shareholders or participants) the companies must send the copies of the audit report and financial statements to the commission within 10 working days after their approval, as well as publish them on the RA Public Notices website (http://www.azdarar.am)

It can be concluded that only some SOEs operating in the energy sector conduct external audit in line with international standards, especially when it is required by the MDBs.

Benchmark 8.5.5.

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

There are no regulations that would require the boards of SOEs to deliberate about the findings of internal and external audit. Example, provided by the High Voltage Electric Systems, shows that the company does not have an audit committee. Only one SOE – the Nuclear Power Plant – confirmed that the board reviewed the external audit report that was conducted recently.

[23] Minestry of Finance of the Republic of Armenia "Declaration on mandatory audit organizations"

Benchmark 8.5.6.

10 largest SOEs disclose at least:

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

The CSOs stated that it is very difficult to obtain information about SOEs on the governmental or companies' websites. Information provided by several SOEs after the virtual visit confirms that the disclosure is not clearly regulated, as a result companies follow their own rules. Several companies disclose financial and operational results and information about material transactions with other entities. The information about the salaries of CEOs is usually included in annual reports of SOEs. Information about remuneration of board members is not published, as they do not receive any salary in many cases. In contrast, the High Voltage Electric Systems confirmed that they do publish information about remuneration for its Board. The monitoring team noted that information about SOEs is difficult to obtain and it is often inconsistent. For the next round of monitoring, the monitoring team suggests that this information is provided in a table format covering all largest SOEs.

9 Enforcement of Corruption Offences

The evaluation of enforcement of corruption offences is impacted by two factors. A lingering issue is the gaps in statistical data, gathering which is an obstacle to the thorough evaluation of Armenia's performance in this field. Another factor is the recent substantial changes in criminal law, indicating steps taken into the right direction, but their effect on actual enforcement practice can be measured only in the framework of future evaluation rounds. Overall, Armenia tends to move toward active enforcement of corruption offences, but at the moment many legal issues remain unaddressed, while the existing legal norms are not necessarily effectively enforced.

Indicator 9.1. Liability for corruption offences is effectively enforced

Background

The 4th monitoring round report of Armenia highlighted the urgent necessity to collect and analyse data on corruption cases in order to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled, including how new types of corruption offences are being investigated and prosecuted.[24]

Assessment

"*Track record of enforcement… with final convictions*" means that the monitoring team looks into statistics of convictions for the respective offences that became final. The courts collect relevant data, but it is often very confusing. While Armenia marks a high level of enforcement of active and passive bribery offences in the public sector, the track record of enforcement of the same offences in the private sector is very low.

[24] OECD (2018), Anti-Corruption Reforms in Armenia. 4th round of monitoring of the Istanbul Action Plan.

Benchmark 9.1.1. – 9.1.8.

BENCHMARK	Armenia 2020		Score	Level
	Total	Per 1 million of population		
9.1.1. Track record of enforcement of active and passive bribery offences in the public sector with final convictions*	-	-	**No points**	**No points**
9.1.2. Track record of enforcement of active and passive bribery offences in the private sector with final convictions	1 (under investigation by NSS)	0,34	**No points**	**No points**
9.1.3. Track record of enforcement of offence of offering or promising of a bribe, bribe solicitation or acceptance of offer/promise of a bribe with final convictions	84	~28	**No points**	**No points**
9.1.4. Track record of enforcement of bribery offences with intangible and non-pecuniary undue advantage with final convictions	2	`~1	**No points**	**No points**
9.1.5. Track record of enforcement of trading influence offence with final convictions	12	~4	**No points**	**No points**
9.1.6. Track record of enforcement of illicit enrichment offence with final convictions or a track record of cases of non-criminal confiscation of unexplained wealth	n/a	n/a	**No points**	**No points**
9.1.7. Track record of enforcement of foreign bribery offence with final convictions	n/a	n/a	**No points**	**No points**
9.1.8. Track record of enforcement of money laundering sanctioned independently of the predicate public sector corruption offence with final convictions	n/a	n/a	**No points**	**No points**

*The monitoring team took into account 54 cases of embezzlement, as covered by article 179 of the Criminal Code. During the next monitoring rounds, the embezzlement, committed only by public officials, will be taken into consideration.

In 2020, population of Armenia was estimated at 2,963,243 people. Source: https://www.worldometers.info/world-population/armenia-population/

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

Background

Table 9.1. Sanctions for basic (non-aggravated) offences in Armenia

	Criminal Code	New Criminal Code
Active bribery of public official	fine in the amount of 100-fold to 200- fold of the minimum salary, or short-term imprisonment for a term of 1 to 3 months, or imprisonment for a term of maximum 3 years	Short-term imprisonment up to 2 months, or imprisonment for a term of maximum 2 years
Passive	fine in the amount of 300-fold to 500- fold of the minimum salary, or imprisonment for a term of maximum 5 years with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years	Short-term imprisonment from 1 to 2 months, or imprisonment for a term of maximum 5 years
Active bribery of public servant not considered as an official	fine in the amount of 200-fold to 400-foldoftheminimumsalary, or imprisonment for a term of maximum 3 years with deprivation of the right to engage in certain activities for a term of maximum 3 years	Will be covered by active bribery of a public official
Passive bribery of public servant not considered as an official	fine in the amount of 200-fold to 400-fold of the minimum salary, or imprisonment for a term of maximum 3 years with deprivation to engage in certain activities for a term of maximum 3 years	Will be covered by passive bribery of a public official
Active trading in influence	fine in the amount of 200-fold to 400- fold of the minimum salary, or imprisonment for a term of maximum 3 years	Fine in the amount of 10-fold to 30-fold of the minimum salary, or restriction of freedom up to 3 years, or short-term imprisonment from 1 to 2 months, or imprisonment up to 3 years
Passive trading in influence	fine in the amount of 200-fold to 400- fold of the minimum salary, or imprisonment for a term of maximum 3 years	Fine in the amount up to 20-fold of the minimum salary, or restriction of freedom up to 2 years, or short-term imprisonment up to 2 months, or imprisonment for a term of maximum 2 years
Active commercial bribery	fine in the amount of 200-fold to 400- fold of the minimum salary, or deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years, or imprisonment for a term of maximum 3 years	Short- term imprisonment up to 2 months
Active bribery in sports	fine in the amount of 300-fold to 500-fold of the minimum salary, or deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years, or short-term imprisonment for a term of 2 to 3 months, or imprisonment for a term of maximum 3 years	Short-term imprisonment up to 2 months, or imprisonment for a term of maximum 2 years
Passive bribery in sports	fine in the amount of 300 -fold to 500-fold of the minimum salary, deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years or short-term imprisonment for a term of 2 to 3 months, or imprisonment for a term of maximum 3 years	Short-term imprisonment up to 2 months or imprisonment for a term of maximum 3 years

Embezzlement (committed by use of official position)	fine in the amount of 400-fold to 700-fold of the minimum salary, imprisonment for a term of 2 to 4 years, with or without deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years	Fine in the amount from 20-fold to 50-fold of the minimum salary, or public works from 80 to 150 hours, or deprivation of the right to hold certain positions or to engage in certain activities for a term from 2 to 5 years, or restriction of freedom up to 2 years, or imprisonment for a term of maximum 2 years
Abuse of powers	fine in the amount of 200-fold to 300-fold of the minimum salary, or deprivation of the right to hold certain positions, or to engage in certain activities for a term of maximum 5 years, or short-term imprisonment for a term of 2 to 3 months, or imprisonment for a term of maximum 4 years	fine in the amount of 20-fold to 40- fold of the minimum salary, or deprivation of the right to hold certain positions or to engage in certain activities from 3 to 5 years, or restriction of freedom from 1 to 3 years, or short-term imprisonment for a term from 1 to 2 months, or imprisonment for a term from 1 to 4 years.

Source: OECD (2018), Anti-Corruption Reforms in Armenia. 4th round of monitoring of the Istanbul Action Plan and replies to the monitoring questionnaire.

Assessment of compliance

Benchmark 9.2.1.

Proportionate and dissuasive sanctions are routinely applied for corruption crimes

Because of the major discrepancies in the collected statistics and due to the lack of information, it is very hard to evaluate whether proportionate and effective sanctions are routinely applied in Armenia for corruption crimes.

The sanctions, foreseen by the Criminal Code, seem to be in line with those set in law in other ACN countries for the same corruption related offences. Still, according to the official statistics, only fines and imprisonment are applied in cases of major bribery and corruption offences. Almost half of the convicted persons are sentenced to imprisonment, however, there is no information available on how the actual sanctions correlate with the penalty frames. Information on the average amount of fines is not maintained, but statistics show that the average term of imprisonment is from 1 to 3 years. In 2020, 32 imprisonments were imposed in corruption cases, even though only 14 convicted persons are actually serving a prison sentence. Not all convicts receive additional sanctions, such as ban from holding public office or engaging in certain activities. The courts usually apply the minimum punishment provided by the specific offence or release convicted persons without serving a real imprisonment.

The monitoring attracts attention to the fact that new Criminal Code prescribes lighter penalties for some corruption offences. In the context of a general issue of routine application of sanctions in corruption cases, the new sanctions might not be enough dissuasive.

Benchmark 9.2.2.

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

The 4th round monitoring report of Armenia highlighted that in the vast majority of corruption cases imprisonment is not enforced, and only very few criminal proceedings result in a conviction with "real" imprisonment terms. This leads to the conclusion that sanctions for corruption offences are not dissuasive in practice. The Government explained that this was because of many bribery cases with very low amount of bribe. In many cases, described in the replies to the questionnaire, accused were released from prison in amnesty.

The data on the types of punishments imposed for aggravated bribery offences is not collected by the courts.

In addition, Armenia should gather and provide relevant data for aggravated bribery offences.

Benchmark 9.2.3.

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

The benchmark looks at the universal practice of dismissal of the convicted officials from public office. Therefore, it is necessary to obtain data about the total number of public officials convicted of a corruption crime, and how many of them were dismissed from office. Such information is missing. The PGO publishes only the number of public officials temporarily removed from the office during the pre-trial investigations.

In general, it is worth mentioning that even though the Criminal Procedure Code allows a prosecutor, as well as — upon the consent of the prosecutor — an investigator, to render a decision suspending the term of office of a suspect or accused, the mechanisms for applying the aforementioned right are sometimes missing. The dismissal is not automatic, and the decision on suspending the term of office of the suspect or accused shall be forwarded to the head of administration of his or her workplace. In practice, it ends up with the impossibility to suspend the powers of the heads of local communities. Such cases were reported both by the government and civil society. Besides, only the terms of office of public servants may be suspended upon the decision of a prosecutor or investigator, while during investigation of corruption crimes very often a need also emerges to suspend the terms of office of persons not holding positions in public service.

This issue is resolved by the amendments to the Criminal Procedure Code, adopted on June 30, 2021. Pursuant to Article 152 of the new CPC the terms of office of persons, not holding positions in public service can also be suspended.

Statistics on convictions for embezzlement illustrate the lack of practice of removal from public office. No one among 14 public officials convicted for embezzlement was dismissed from office.

The collected and analysed information reflects that there is no general practice of dismissing public officials from the office if they were convicted for corruption crimes.

Benchmark 9.2.4.

General effective regret provisions are not applied to corruption crimes

In accordance with Article 312, Part 4 of the RA Criminal Code, a bribe-giver is exempted from criminal liability, if he or she was extorted to give a bribe or voluntarily reported it to law enforcement officials. The Government mentioned that the recently adopted Criminal Code removes this exemption. This novelty will apply to all corruption crimes.

As of today, the current legislation does not prohibit explicitly application of the general effective regret defence to corruption offences.

Benchmark 9.2.5.

Any exemption from bribery offence, if stipulated in the law, is applied by courts taking into account circumstances of the case :

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

According to the authorities, Article 312, Part 4 of the Criminal Code “includes all the criteria listed” under the benchmark. For instance, the legislation provides for a possibility of exemption from active bribery, if the following criteria are met: the bribe giving is a result of extortion; the voluntary reporting comes within three days after committing the bribe and when the law enforcement bodies were not aware of the crime, the bribe giver is actively cooperating with the investigation and prosecution. These criteria are mostly sufficient for reaching the compliance level under this benchmark.

However, the monitoring team did not receive any supporting materials (summary of court cases, interpretation by the supreme court, academic papers) that prove that any exemption from bribery offence (not only in case of effective regret defence) is applied by courts in a manner compliant with the benchmark’s conditions. In addition, Armenia should prove that exemptions, stipulated in the law, do not apply in cases of bribery of foreign public officials.

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

Background

According to Article 75 of the RA Criminal Code, the period of limitation depends on the gravity of the offence. A person shall be released from criminal liability where the following terms have elapsed from the day when the criminal offence is regarded as completed:

- 2 years from the day when a criminal offence of minor gravity is regarded as completed;
- 5 years from the day when a criminal offence of medium gravity is regarded as completed;
- 10 years from the day when a grave criminal offence is regarded as completed;
- 15 years from the day when a particularly grave criminal offence is regarded as completed.

Immunities

The list of public officials enjoying immunities, as well as related basic rules and procedures are provided in the Constitution, Criminal Code, and Criminal Procedure Code of Armenia. The immunity from prosecution is granted to the Members of Parliament and judges. As it was pointed out during the 4th round of monitoring, due to the adoption of the constitutional amendments in 2015, the provisions in regards to the immunity enjoyed by different officials were changed, and the scope of immunity has been narrowed.

Criminal prosecution of the deputy may be initiated only with the consent of the National Assembly. Without the consent of the National Assembly, a member of parliament may not be deprived of liberty, unless caught at the time of, or immediately after, committing a crime. In this case, the deprivation of liberty may not last longer than 72 hours. The Chairman of the National Assembly should be notified immediately of the MP's deprivation of liberty.

With respect to the exercise of his or her powers, a judge of the Constitutional Court may be criminally prosecuted only with the consent of the Constitutional Court. The rules on deprivation of liberty are the same as those applying to the deputies of the National Assembly.

With respect to the exercise of his or her powers, a judge may be criminally prosecuted only with the consent of the Supreme Judicial Council. The President of the Supreme Judicial Council should be immediately informed if a judge is deprived of liberty.

The issue of immunity became subject of constitutional adjudication in the case of former President of Armenia. The Constitutional Court in its ruling of September 4, 2019 concluded that article 35 of the Criminal Procedure Code (on the circumstances excluding criminal prosecution or criminal proceedings),[25] which does not cover functional immunity of officials enjoying special protection, is unconstitutional.

[25]Constitutional Court (2019), Decision of the RA Constitutional Court on the basis of Robert Kocharyan's application under Article 35 of the Criminal Procedure Code, no. SDO-1476 of 4 September 2019 (unofficial translation).

Assessment of compliance

Benchmark 9.3.1.

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

Armenia did not exclude by law the application of statute of limitations to corruption offences. The RA Criminal Code does not fix any specific statute of limitations period or time limit for conducting investigation of corruption related cases.

Considering that majority of corruption crimes in Armenia belong to the category of criminal offences of medium gravity, grave or particularly grave criminal offences, the statute of limitations period in corruption cases varies from 5 to 15 years. However, the longest period applies only in cases of aggravated bribery offence committed by an official. The law provides the reset of statute of limitations if, before the lapse of the relevant time period, the person commits a mid-level/grave/particularly grave crime. In such cases, the calculation of statute of limitations starts from the moment of considering the new crime as completed.

According to paragraph 1, Part 1 of Article 31 of the CPC, the lapsing of the statute of limitations period is interrupted, if the identity of the perpetrator is not identified. The law also suspends the statute of limitations during the period when the person had immunity from prosecution.

The time limits for conducting an investigation of corruption crimes are not differentiated. According to Article 197 of the CPC, preliminary investigation should be completed within two months. The period is calculated from the day of the decision to initiate a criminal investigation. The prosecutor can extend this period based on the motion of the investigator. It is not clear what the legal grounds are for submitting a motion by the investigator. Moreover, considering the lack of specialised investigators and their workload, the 2-months period is not sufficient to ensure effective investigation of complex corruption offences. In addition, the civil society highlighted that establishment of the new Anti-Corruption Committee, which will be investigating corruption offences, will require transitional period. Therefore, the current time limits for conducting investigation should be extended.

During the on-site discussion, the monitoring team was told that there were no cases of refusal to extend the investigation period; however, the rules on the statute of limitations remain very blurry.

Benchmark 9.3.2.

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

According to the Government, the legislation establishes clear procedures, which enable investigative bodies to overcome the obstacles related to the immunity by getting authorisation from relevant bodies. In practice, the need to lift the immunity does not affect the initiation of the criminal proceedings. The investigation is conducted, and if there is a justified suspicion that a person with the immunity is a suspect

or should be indicted, the request to lift the immunity is made. So, the question of immunity is raised at the stage of accusation.

The decision to lift immunity is taken in a short timeframe (1-2 days) after submitting the application for lifting immunity. In addition, the Government provided examples of cases, which prove that requests to lift immunity are approved very fast. Non-governmental stakeholders confirm that clear and transparent procedures for lifting immunities are applied in practice without undue delay.

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

Assessment of compliance

Benchmark 9.4.1.

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

In Armenia, there is a centralized mechanism of reporting of the pre-trial data. The investigative bodies submit relevant data to the General Prosecutor's Office. Pursuant to Article 5 of the Law on the Prosecutor's Office, the Prosecutor General's Office of the Republic of Armenia publishes annual reports on the investigation and prosecution of corruption crimes.

The report covers information on the results of the investigation of corruption crimes committed during the previous year, statistical data, comparative analysis and conclusions.

The benchmark requires that national authorities conduct a regular analysis of enforcement statistics.

According to the Government, comparative analysis and conclusions, based on the enforcement statistics, are presented separately. The PGO's report describes the main issues in the field of investigation and prosecution of corruption, and general trends in enforcement of such offences.

However, statistics provided by the PGO do not include all data, required by the present benchmark. The PGO's report covers information on the number of initiated (opened) criminal investigations, cases closed (on the ground of acquittal and on the ground of non-acquittal), number of cases sent to court with indictments. In addition, statistics cover the number of suspended proceedings and joint cases. Data is presented with the breakdown by each type of corruption offences. The number of persons under prosecution, number of arrested, released, accused persons are mentioned for each article of the Criminal Code. The report also mentions the number of officials and public servants subject to criminal prosecution in corruption cases.

The courts collect statistics on the number of final convictions and convicted persons, sanctions applied and the total number of officials convicted for corruption offences. As regards court statistics, Armenia should review the methodology and the template for collecting data, because numbers do not add up very often.

During the 4th round of monitoring Armenia brought up the fact that statistics on position/rank/occupation of the suspect/indicted/convicted person have been introduced from the beginning of 2018. However, such data are still not maintained. Also, there is no evidence how the information on the level of convictions in corruption matter was used for further analysis of the nature and level of corruption, and of the effectiveness of the law enforcement bodies in fighting corruption crimes.

Benchmark 9.4.2.

Detailed enforcement statistics on corruption offences is regularly published online

The report on investigation and prosecution of corruption offences is published annually on the website of the Prosecutor General's Office. The statistics collected by the courts of different levels are published on the website of the judiciary of Armenia. Because Armenian national authorities do not gather all data required under the previous benchmark, the monitoring concludes that the necessary minimum of enforcement statistics is not published online. However, Armenia is on a good track, as the collected statistics are almost always published online, but maintenance of statistics on the type of officials convicted would help Armenia to receive more positive assessment.

10 Enforcement of Liability of Legal Persons

ACN Secretariat restates its recommendations of the 4th round of monitoring and encourages Armenia to pursue its intention to enforce liability of legal persons for corruption offences.

As of today, Armenia remains non-compliant with the international standards, which require imposing corporate liability for corruption offences. The new Criminal Code, promulgated on 27 May 2021, reflects most, but not all the requirements set up by the new anti-corruption indicators for the 5th round of the IAP monitoring.

Armenia should start enforcement of liability of legal persons in practice, as soon as the relevant provisions of the new Criminal Code will enter into force. The anti-corruption indicators, developed for the IAP monitoring, could not be taken into consideration during the legislative drafting process, but the Secretariat encourages Armenia to incorporate the necessary anti-corruption standards into the new Criminal Code before its entry into force on 1 July 2022.

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

Assessment of compliance

Armenia was lagging behind in introducing effective legislative provisions with regards to the liability of legal persons for corruption offences. According to legal provisions in force, corporate liability for corruption offences is not established in Armenia. Perhaps, Chapter 20 of the new Criminal Code, adopted by the RA National Assemble on May 5, 2021, introduces corporate liability for all crimes, including corruption offences. The criminal liability will be applicable to legal persons from January 1, 2023. However, the monitoring looks only into the applicable primary law in force. New developments will be taken on board during the next monitoring rounds.

Benchmark 10.1.1.

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

The benchmark sets the basic requirement of having corporate liability for corruption offences established in the primary law. According to the monitoring guide, the benchmark does not require any specific type of liability. Given that Armenian criminal legislation does not envisage any type (criminal or non-criminal) of

corporate liability for any type of corruption offences, the Armenian legal system does not feature corporate liability for corruption offences.

The analysis of the following benchmarks would be beside the mark.

Benchmark 10.1.2.

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

Benchmark 10.1.3.

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

Indicator 10.2. Sanctions for legal persons are proportionate and dissuasive

Assessment of compliance

Legal persons should be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions. In default of corporate liability for corruption offences, a technical assessment under this indicator is put off until the entry into force of the new Criminal Code.

Benchmark 10.2.1.

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

Benchmark 10.2.2.

Non-monetary sanctions (measures) apply to legal persons (e.g. debarment from public procurement, revocation of a license)

Benchmark 10.2.3.

The law establishes sentencing principles specially designed for legal persons

Indicator 10.3. Due diligence (compliance) defence is in place

Assessment of compliance

The indicator requires that the law provides for a defence, which the company can use to argue against imposition of sanctions on it, or to mitigate sanctions. The introduction of the corporate liability is a conditio sine qua non for the establishment of the due diligence defence. Given that such type of liability does not exist in Armenia, the mechanism of compliance defence cannot be put in place.

Benchmark 10.3.1.

The law allows due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions

Benchmark 10.3.2.

The law allows the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court

Indicator 10.4. Statute of limitations period and investigation time limits do not impede effective corporate liability

Assessment of compliance

Under the current legislation, the concept of corporate liability does not exist in Armenia. Therefore, the statute of limitations period is not applicable in this context.

Benchmark 10.4.1.

The statute of limitations period and time limit for conducting an investigation, if exist, are sufficient for the effective enforcement of corporate liability

Indicator 10.5. Liability of legal persons is enforced in practice

Assessment

Considering the fact that legal provisions on liability of legal persons for corruption offences are still at the development stage, Armenia cannot provide any statistics on the enforcement of liability of legal persons.

Armenian law enforcement authorities should develop their criminal statistical databases and methodologies taking into account the type of data listed below. The collected quantitative data should give accurate information on targeted variables. It will facilitate the analysis of statistics for the purposes of the IAP monitoring.

Benchmark 10.5.1. – 10.5.5.

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 1 million of population		
10.5.1. Track record of corporate sanctions applied for corruption offences	-	-	**No points**	**No points**
10.5.2. Track record of proportionate and dissuasive sanctions imposed on legal persons, including monetary fines	-	-	**No points**	**No points**
10.5.3. Track record of confiscation of direct and indirect corruption proceeds, value-based confiscation applied to legal persons	-	-	**No points**	**No points**
10.5.4. Track record of due diligence (compliance) applied in practice as a defence or a mitigating factor	-	-	**No points**	**No points**
10.5.5. Track record of non-monetary sanctions applied to legal persons	-	-	**No points**	**No points**

Indicator 10.6. Enforcement statistics on corporate liability is used for analysis and available for the public

Assessment of compliance

Armenia should ensure that, after the entry into force of the new Criminal Code, statistical data on corporate liability will be collected and published annually. The data should be gathered in such manner that it allows relevant law enforcement bodies to gain first-hand knowledge and original insights into investigation, prosecution, trial and sanctions applied to legal persons. As of today, the requirements set up by this indicator are not met.

Benchmark 10.6.1.

Authorities collect, analyse and regularly publish online detailed statistics on detection, investigation, prosecution, trial and sanctions applied to legal persons

Table 10.1. Pre-assessment of the corporate liability provisions under the new Criminal Code (excluding benchmarks on enforcement)

Indicator 1. The law provides for an effective standard of liability of legal persons

10.1.1.Liability of legal persons for corruption offences is established in the law	The notion of corporate liability is included in the new Criminal Code, adopted by RA National Assembly on May 5, 2021. Article 122 of the new CC establishes the all-crime approach, under which a criminal corporate liability for all offences is covered by the Code, including corruption crimes. All legal persons, except state bodies, can be subject to criminal liability.
10.1.2. Actions of lower level-employees, agents, third parties or beneficial owners (controllers) of the legal entity may trigger corporate liability	The question is regulated by article 123 of the new Criminal Code, which ensures that a criminal act of any employee (not only senior or responsible officials), agent, third parties of the legal entity may trigger corporate liability if other conditions are met. Such conditions sometimes narrow the possibility to establish corporate liability. For instance, the new CC requires that management body or the director should be aware of the offence in order to establish liability of the person representing the legal person. First of all, a person should be authorised to represent the legal entity or act on its behalf based on the law, other legal act, contract, charter, special authorisation or decision adopted by the legal entity. In addition, a natural person representing the legal entity should be subject to criminal liability, if the criminal offence was committed *"with permission or upon the incite of the person having competence to influence activities of the legal entity"*. Regarding the beneficial owners, article 123 of the new CC stipulates, *inter alia*, that legal person is subject to criminal liability if the crime was committed for the benefits of the legal person by a person who, among others, "*by the virtue of direct or indirect participation in the statutory capital of the legal person, is entitled to give binding instructions for the legal person or to influence over the decisions or actions of the legal person"*. This provision can be interpreted, as if such person has the right to give instructions. It is contradictory with the concept of the beneficial ownership. It means that ultimate beneficial owners, who are not recorded as shareholders of the company and have no statutory rights, but who have actual power and authority to direct the company, are excluded from the field of application of the new Criminal Code.
10.1.3. Liability of legal persons is autonomous, i.e. not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted or convicted	According to the Government, subjecting a natural person to criminal liability will not exclude criminal liability of the legal entity for the same crime. Exemption of a natural person from criminal liability is not a ground for exemption from liability of a legal person. The new Criminal Code does not regulate this issue cohesively. On the one hand, article 123 provides the basis for criminal liability of legal persons and in all three listed grounds there must be a crime committed by a natural person. On the other hand, paragraph 5 of the same article mentions that subjecting the natural person to criminal liability shall not exclude the criminal liability of the legal person for the same crime. In addition, releasing a natural person from criminal liability shall not serve as a ground for releasing a legal person from criminal liability.

	Article 437 of the Draft Criminal Procedure Code states that criminal liability of a natural person with respect to the criminal offence, indicated in part 1 of Article 123 of the Criminal Code of the Republic of Armenia, or proving his or her guilt in another manner shall not preclude the criminal liability of the legal person. These proceedings shall be conducted separately and shall not replace each other.

Table 10.2. Pre-assessment of the corporate liability provisions under the new Criminal Code (excluding benchmarks on enforcement)

Indicator 2. Sanctions for legal persons are proportionate and dissuasive

10.2.1. The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including monetary fines proportionate to the amount of the undue benefit	Chapter 21 of the new Criminal Code regulates the question of law enforcement measures and sanctions applying to legal persons. According to Article 128 of the new CC, the amount of fine is different depending on the gravity of crime, size of damage caused, the measures taken to prevent the crime and the legal interests of the crime participants or other injured parties. However, it cannot exceed 20% of the gross income of the legal person during the year preceding the commission of the offence. It is not the best approach, as it is not dissuasive for the companies with large income, and creates a risk of "outsourcing" corrupt activities to small firms or subsidiaries. The new CC provides discretion to the court to decide on the amount of fine, which shall not be such as to result in bankruptcy or suspension of operations. The guidelines for judges mention various criteria for fixing the amount of fine. Most of the criteria are related to the financial situation of the company. The court should also take into account opinion of the Central Bank on the risks for the stability of financial systems when imposing sanctions on financial institutions. However, it is advisable to include the correlation between the fine and the amount of undue benefit or to formulate the fine as a multiplier of the undue benefit. In addition, where a non-criminal-law enforcement measure of property nature has already been applied to the legal person in connection with the same fact, the court shall take into account its nature and severity when resolving the issue of imposing a fine.
10.2.2. Non-monetary sanctions (measures) apply to legal persons (e.g. debarment from public procurement, revocation of a license)	The new Criminal Code mentions following non-monetary sanctions applicable to legal persons: temporary suspension of the right to, or a ban to, engage in certain type of activities, as well as compulsory liquidation. Temporary termination of the right to engage in certain activities may not be imposed on a legal person carrying out activities in the regulated public service sector and should not directly result in bankruptcy of the legal person. Prohibition to carry out activities within the territory of the Republic of Armenia may be imposed only on legal persons established in a foreign state. The forced liquidation is an exclusive criminal-law enforcement measure, which shall be imposed on the legal person for a particularly grave criminal offence. This echoes the requirements of the benchmark.
10.2.3. The law establishes sentencing principles specially designed for legal persons	The recently adopted Criminal Code provides guidance for the judges on how to calculate the amount of fine and whether the execution of the punishment can be suspended (cf. benchmark 10.2.2.). However, it is necessary to establish principles, which would cover other issues, namely what mitigating and aggravating circumstances to take into account, how to take into account the conduct of the company or of its leadership, etc. Such guidelines can be included in the law or in other legal instruments.

Table 10.3. Pre-assessment of the corporate liability provisions under the new Criminal Code (excluding benchmarks on enforcement)

Indicator 3. Due diligence (compliance) defence is in place

10.3.1. The law allows due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions	Article 124 of the new CC envisages the possibility to exclude criminal liability if the legal person took all the necessary and adequate steps to prevent commencement of crime by natural persons, but there was no real possibility to prevent the crime. Article 125 of the new CC tends to reflect the same rules, stipulating that a legal person shall also be released from criminal liability in the case, when it

	has eliminated the reasons and conditions contributing to the commission of the criminal offence, if such exist. However, the Criminal Code omits the fact that compliance or due diligence defence should be put in place when the company implemented a robust compliance system. The new Criminal Code should take into account that *"necessary and adequate steps to prevent commencement of crime by natural persons"* must encompass adequate internal control, ethics and compliance programmes. It is also not clear which parts of the Chapter 12 of the new CC on releasing from criminal liability can be applied to legal persons. For instance, will the voluntarily reporting to competent authorities or active cooperation with investigative authorities be taken into account for legal persons? Article 440 the new CPC (making a reference to Article 125 of the new CC) also provides for a possibility to exclude criminal liability of the legal person, if the latter has compensated for the damage caused and settled other consequences of the alleged crime; or if the legal entity has returned the property acquired as a result of the commission of the criminal offence, including the income gained.
10.3.2. The law allows the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court	The new Criminal Code does not foresee the possibility for such deferment (suspension).

Table 10.4. Pre-assessment of the corporate liability provisions under the new Criminal Code (excluding benchmarks on enforcement)

Indicator 4. Statute of limitations period and investigation time limits do not impede effective corporate liability

10.4.1. The statute of limitations period and time limit for conducting an investigation, if exist, are sufficient for the effective enforcement of corporate liability	According to Article 83 of the new CC, statute of limitations applies as in other procedures (and concerns all types of crimes and subjects). Legal persons are not subject to any special rules in this matter. The statute of limitations shall be calculated from the day following the completion of the crime until rendering a decision on involving the person as an accused. It is interrupted if a person commits a new criminal offence or if a person evades investigation. According to the new Criminal Code (article 83), no statute of limitations shall be applied with regard to persons having committed criminal offences provided for by Article 133-154, Article 308, point 1 of part 2 of Article 441 or Article 450 of the recently adopted Criminal Code, irrespective of the moment of commission of the criminal offence. The above-mentioned provisions of the Code are not related to corruption offences.

11 Recovery and Management of Corruption Proceeds

In Armenia, the reforming process of asset recovery and management legislation is very dynamic. The Department for Confiscation of Illicit Assets was established, as a dedicated body to conduct financial investigations, to trace and recover assets. Nonetheless, its competence is restricted to the recovery of assets in civil proceedings. There are also no specialised practitioners in the management of recovered assets.

While the legal framework sets out a basis for criminal confiscation in corruption cases, the absence of the track record on application of seizure and confiscation measures speaks for itself. The main focus is made on the confiscation of illicit assets in civil cases, so on the recently established specialised Department that has been operational during a short period of time and, therefore, could not show the results of its work in concrete numbers.

The investigative authorities have direct access to various sources of information and use mechanisms to obtain bank data without obstacles. Still, the centralised registers of bank accounts and beneficial owners have to be put in place to enhance proactive tracing and recovery of assets.

Both the legal arrangements and practice in regard to the confiscation of indirect proceeds, value-based confiscation, mixed proceeds, non-conviction based or extended confiscation do not exist. It does not seem like in the near future any promising changes will happen in this field.

In addition, Armenia should review the system of collection of its criminal enforcement statistics and include data on the confiscation of instrumentalities and proceeds of corruption crimes.

Indicator 11.1. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Background

As stated during the 4th round of monitoring, according to the Criminal Code of RA, Armenia had 2 regimes of confiscation: first one was the forfeiture, which is an enforcement tool according to the Criminal Code of RA, and the second one was the confiscation, which is a sanction to be applied.

The recently adopted Law on Civil Forfeiture of Illegal Assets introduced a mechanism of non-conviction based confiscation. Under the new Law, the illegal assets shall be subject to forfeiture where, based on evaluation of the submitted evidence, the court comes to the conclusion that the market value of such assets exceeds AMD 50 million (approximately USD 100 000) at the moment of filing the claim.

If the conditions are met, property can be forfeited through a civil procedure. The competent authorities can launch examination even when a criminal conviction is not possible: in cases where the trial has been terminated, the accused has been acquitted, the statute of limitations has expired, or when the trial cannot take place due to the adoption of the amnesty law or the death of the person concerned.

Assessment of compliance

Benchmark 11.1.1.

Dedicated bodies, units or groups of specialised officials dealing with identification, tracing and return of corruption proceeds (asset recovery practitioners), as well as with the management of seized and confiscated assets in corruption cases are established and function in practice

According to the Government, the asset recovery functions are still divided between two units within the Prosecutor General's Office.

The Law on Civil Forfeiture of Illegal Assets, adopted in May 2020, assigns the asset recovery function to the specialised subdivision of the Prosecutor General's Office of the Republic of Armenia. The Department for Confiscation of Illicit Assets within the Prosecutor General's Office has been operational since September 2020, and is staffed with 8 prosecutors and 5 economists. This specialized Department is responsible for confiscation of unexplained wealth (non-conviction based asset forfeiture). All motions are sent to the court of first instance of Yerevan, in which 4 judges are specialized in/assigned to the trial of civil forfeiture related cases. However, the civil society raised the issue of leniency of court proceedings in such cases. According to the authorities, there is no judicial practice on civil forfeiture.

The second unit, the Department of State's Interests Protection, is responsible for identification and recovery of damages caused to the State by illegal activities (including by activities prohibited under criminal law, thus, corruption crimes). Such decentralization of functions is acceptable under this benchmark.

However, while the Department for Confiscation of Illicit Assets deals exclusively with asset recovery under the civil forfeiture regime and does not perform other duties, the Department of State's Interests Protection has other responsibilities beyond asset recovery.

In addition, the Law on Civil Forfeiture of Illegal Assets does not provide legal framework to ensure that asset management function is assigned to a specialised body or unit. Confiscated assets are considered to be the State property and are transferred to the state budget or to the disposal of the State Property Management Committee for insuring the management of the property. Pursuant to Article 25 of the Law, the competent authority - specialised department within the GPO - may transfer the assets to the state and local self-government bodies having equipment, premises and specially qualified staff necessary for maintenance of assets, as well as to the state organisations. The State may transfer the given assets for trust management, if specialised current management of assets is necessary for securing the value of assets. On December 17, 2020, the RA Government adopted a Decision No. 2066-N, which provides a basis for contracting a trust under asset recovery procedures. So far, there were no cases of the transfer of property to the trust management.

The above-mentioned legal provisions do not designate a special body, unit or group of officials that would have a clearly established responsibility to organize management of seized or confiscated assets. Given

that one of the required functions - asset management - is not clearly covered by the mandate of any agency, unit or specialised staff, the Republic of Armenia does not meet the requirements of the present benchmark.

Moreover, the system of asset recovery is quite new and not full-fledged. Therefore, due to the lack of existing practice of asset management and recovery, it is difficult to conclude whether it functions well and is operational in practice.

Indicator 11.2. Identification and tracing of corruption proceeds are effective

Background

The 4th round monitoring report of Armenia highlighted that there are some unreasonable limitations on the access to financial information by investigators and prosecutors dealing with corruption cases. Moreover, they lack direct access to some state databases. There is also no clear coordination of investigations of money laundering offence with a predicate corruption offence. Regarding international cooperation in corruption cases, the report mentioned that Armenia could make more use of modern and direct forms of international cooperation, and available mechanisms for cooperation under the umbrella of international and regional organisations.

Assessment of compliance

Benchmark 11.2.1.

Investigative bodies and asset recovery practitioners use direct access to state databases for corruption investigations and recovery of proceeds of corruption

For the purposes of this benchmark, “state databases” mean all databases operated by public authorities, which contain information necessary for investigation.

According to the Government, the investigative bodies in Armenia have access to the information held by notaries and Credit Bureau, but it is available only upon receipt of the relevant court decision. At the same time, information about company shares, tax and customs data is accessible without prior court authorisation.

In addition, the order of the Chairman of the Investigative Committee of the Republic of Armenia No. 39-L dated 19 April 2021 defines more precisely a list of databases to which the investigators of the Investigative Committee have access and the procedure to access relevant data, namely:

- The State Population Register of the Passport and Visa Department of the Police of the Republic of Armenia;
- Information Database of the Information Center of the Police of the Republic of Armenia on Criminal Record and Research;
- Electronic Register of Vehicles of the Traffic Police of the Police of the Republic of Armenia;
- Electronic Register of Driving Licenses of the Traffic Police of the Police of the Republic of Armenia;

- Electronic Register of Administrative Acts of the Traffic Police of the Police of the Republic of Armenia;
- State Register of Legal Entities of the Ministry of Justice of the Republic of Armenia;
- Electronic Register of the Civil Status Registration of the Ministry of Justice of the Republic of Armenia;
- Electronic Register of the State Cadastre Committee of the Republic of Armenia;
- Electronic Register of One-Time Beneficiaries and Pensioners of the State Social Security Service of the Republic of Armenia;
- Income Tax Information System of the State Revenue Committee of the Republic of Armenia.

Investigators from different divisions of the Investigative Committee of the Republic of Armenia also use, via a separate device, the "Unified Information Space" system of the Central Bank of the Republic of Armenia, through which information on money laundering and terrorist financing is exchanged. The technical availability of electronic information systems and the login, and passwords are provided to users automatically by the technical support department of the RA Investigative Committee.

The same mechanism of granting access to the above-mentioned databases applies, when information should be obtained by the investigators of the RA Special Investigation Service (SIS).

Pursuant to Article 11 of the Law on Civil Forfeiture of Illegal Assets, the Department for Confiscation of Illicit Assets of the Prosecutor's General Office has the right to access the same information for the purposes of carrying out an examination or bringing an action. Such access is free of charge. Additionally, prosecutors of the mentioned Department have a right to directly access state data on registered weapons, criminal records and searches, and obtain information on enforcement of judicial acts. The prosecutors of the Department for Confiscation of Illicit Assets can tap into the relevant databases by entering a username and password without receiving a prior authorisation. Therefore, access to the mentioned databases is considered to be direct, as defined by the requirements of this benchmark.

Even though specialized criminal justice anti-corruption units use direct access to most of the state databases for corruption investigation and recovery of proceeds of corruption, Armenia does not have a database containing information on beneficial ownership. In June 2021, the National Assembly adopted the law that expands the scope of entities obliged to disclose their beneficial owners. Previously, the concept of "beneficial owner" was defined by the RA Law on State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs, but its application was limited to the scope of the EITI. The new Law envisages a gradual introduction of the verification system of beneficial ownership. Since 1 September 2021, the legal entities, operating in the regulated spheres of public service, are covered by the requirements of the recently adopted Law. In 2022, other legal entities will have to declare their beneficial owners. On 1 January 2023, the Law will also apply to non-profit organizations and limited liability companies having only natural persons as participants. The Law envisages creation of open and transparent register as part of the database of the register of legal entities, to which all investigative bodies and the Department for Confiscation of Illicit Assets within the Prosecutor General's Office already have access.

The assessment suggests that Armenia is for the most part well on track to develop easily accessible and practical databases necessary for the effective work of the investigative and asset recovery practitioners.

Benchmark 11.2.2.

Investigative bodies and asset recovery practitioners use direct access to financial information, including a central registry of bank accounts, and mechanisms to overcome bank secrecy for corruption investigations and recovery of proceeds of corruption

The investigative bodies have access to financial information listed below only based on a court order:

- Banking information;
- Information about security ownership and transactions (with the exception of information about company shares, which is accessible directly);
- Insurance information;
- Information held by Credit Bureau.

The RA legislation and, in particular, article 172 of the Criminal Procedure Code regulate the legal procedure for acquiring information constituting bank secrecy at all stages of proceedings. Depending on the stage of criminal proceedings or the procedural status of persons under investigation, the acquisition of information constituting a bank secrecy is carried out either on the basis of Article 10 of the Law on Bank Secrecy, or as an operational-intelligence measure on the basis of Article 31 and Article 34 of the Law on Operational-Intelligence Activities. Criminal prosecution bodies and asset recovery practitioners may obtain - based on a court decision on search or seizure - information constituting bank secrecy, official information on securities made by the Central Securities Depository, as well as information constituting insurance secrecy.

According to Part 3 of Article12 of the Law on Civil Forfeiture of Illegal Assets, the Department for Confiscation of Illicit Assets has access to the financial data, following the same procedure.

Banking and insurance data as well as information about security ownership can be requested during criminal investigations only about the accused or suspected individual.[26] Access to this type of data is not conditioned by the status of the suspect or accused if information is requested by the asset recovery practitioners. The Cassation Court enlarged legislative opportunities of law enforcement agencies to acquire bank secrecy information about legal entities. Upon receipt of the court decision, the bank should provide the information and the documents required by the criminal prosecution authority within two banking days.

Obtaining court authorisation to overcome bank secrecy is acceptable under the current benchmark. As of today, the prosecutors of the Department for Confiscation of Illicit Assets have submitted more than 30

[26] On January 22, 2020, the National Assembly of Armenia approved amendments to the Laws on Criminal Procedure and on Banking Secrecy. Previously it was possible to disclose bank secrecy only with respect to suspects and accused. The amendments proposed to remove these restrictions. However, the Constitutional Court of Armenia has declared the draft Law unconstitutional.

Armbanks (2020), Armenia's Constitutional Court recognizes amendments to banking secrecy law as not compliant with Constitution.

requests to the court of first instance of the City of Yerevan; in all cases access was fully or partially granted by the court. Therefore, the mechanism of obtaining access to the financial data is operational in practice and not hindered by technical or legal obstacles.

As mentioned under the previous benchmark, the investigative bodies have direct access to the information held by tax and customs bodies. Information held by social security bodies is available *"partially"* directly in electronic form, while information about company shares is accessible directly.

Thus, investigative bodies and asset recovery practitioners have access to most of the financial information necessary for effective investigation of corruption crimes. Nevertheless, it is not clear whether access to the financial data that does not constitute banking, security or insurance secrecy is direct. Investigators can easily obtain data on the public procurement procedures and on the results of the audit conducted by the State Supervision Service and the Audit Chamber of the Republic of Armenia. The reports of the above-mentioned institutions, as well as the results of the public procurements with information about concluded contracts are publicly available.

As for the information received and maintained by the Financial Monitoring Center (FMC), the latter is considered to be intelligence data and cannot be used for any purposes unrelated to the fight against money laundering and terrorism financing. Still, pursuant to Article 13 of the AML/CFT Law, the FMC may provide information to law enforcement authorities on its own motion or upon request. Law enforcement bodies may submit requests to the FMC, if there is a sufficient substantiation of a suspicion of money laundering or terrorism financing. The FMC is obliged to provide information on request within a 10-day period, unless a different timeframe is specified in the request or, based on the reasonable judgment of the FMC, a longer period is necessary for responding to the request. Given that the benchmark does not require direct access to financial information held by FIUs, this restriction has no impact on the current assessment.

In regards to the centralised register of bank accounts, its creation was envisaged by the 2019-2021 Anti-Corruption Strategy of the Government of the Republic of Armenia. In 2020, the Central Bank of Armenia conducted an in-depth study of the international experience regarding bank account registers. Based on the findings of the study, the Draft Law on Amendments to the Law on the Central Bank of the Republic of Armenia was developed and adopted by the National Assembly on June 30, 2021. The law sets out a legal basis for the introduction of a centralised bank account register at the end of 2021. As of today, information on bank accounts and safety deposit boxes in Armenia is not consolidated in one database.

To comply with the benchmark, investigative bodies and asset recovery practitioners should be able to access financial information and central register of bank accounts. Still, current legislation regulates the procedure to access bank secrecy, which is based on obtaining a court order. While Armenia has put in place an operational mechanism to overcome bank secrecy, a creation of the central register of bank accounts is necessary to ensure proper tracing and recovery of proceeds of corruption.

Benchmark 11.2.3.

Active and secure exchange of information among asset recovery practitioners, financial intelligence units, investigative and prosecutorial bodies is ensured in practice

In general, interagency cooperation in the area of anti-corruption is formally established by the Memoranda of Understanding (MoUs) between the relevant stakeholders. The MoUs aim at establishing cooperation

mechanisms and, in particular within the AML/CFT framework, usually touch upon three main spheres of cooperation, namely the exchange of information, discussion and formulation of legal acts, as well as implementation of joint training seminars.

In addition, the document flow among the relevant stakeholders is conducted through the Integrated Information Area (IIA). In practice, the initiator of the correspondence uploads request/report files into the IIA. The respondent uploads the replies to the recipient agency on the same platform. The investigative bodies and the Prosecutor's Office are connected to the IIA. The latter contains data from the Passport and Visa Department of the Police, the Cadastre Committee, the State Register of Legal Entities, etc. Even if information is directly obtained through the IIA, it can be presented as an evidence only if the court issues a relevant order.

The on-site discussions revealed that law enforcement officials usually use the IIA for correspondences with the FMC. Otherwise, the asset recovery practitioners, investigative and prosecutorial bodies do not use the IIA in their daily practice to exchange information.

Benchmark 11.2.4.

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 1 million of population		
11.2.4. Track record of the use of parallel financial investigations conducted with the involvement of financial analysts or financial investigators and other relevant experts	-	-	**No points**	**No points**

In order to facilitate the parallel financial investigations, an Investigation Guide was developed by the Prosecutor General's Office, reflecting on the current AML/CFT legislation and cooperation between competent authorities. In addition, a number of trainings have been organized with the participation of investigators, prosecutors and representatives of judicial authorities on the specificities of financial investigations in money laundering cases.

In addition, the staff of the Investigation Department of the State Revenue Committee is specialised and trained in conducting financial investigations in the criminal proceedings related to economic crimes, including corruption crimes.

For the assessment under this benchmark, the Government provided following information: *"The Department on Confiscation of Illicit Assets issued 213 decisions on the initiation of an investigation".* However,data provided by the Government does not allow to evaluate compliance level under the current benchmark.

According to Part 1, Article 5 of the Law on Civil Forfeiture of Illegal Assets, the Department may launch investigation even when a criminal prosecution or initiating of a criminal case with regard to committing *"one of the crimes provided for by this Law"* (the monitoring takes into account only corruption crimes) is

impossible, or when a criminal procedure was suspended. Also, examination can be launched in case of necessity to provide international mutual assistance.

Therefore, the monitoring experts cannot presume that all the investigations initiated by the relevant Department are conducted alongside or in the context of traditional criminal investigation into corruption offence(s). Law enforcement investigators of predicate offences should either be authorised to pursue the investigation of any related corruption or money laundering financing offences during a parallel investigation, or be able to refer the case to another agency to follow up with such investigations.

It is worth to mention that the Financial Monitoring Center of the Central Bank is actively involved in conducting analysis of financial flows and obtaining information from other FIUs.

Benchmark 11.2.5.

Requests of foreign jurisdictions for the identification tracing, seizure, other restraints or confiscation orders concerning assets in corruption cases, if received, are executed without delay

International legal cooperation in criminal matters is carried out through the Department of International Legal Cooperation of the Prosecutor General's Office with the relevant competent, central body of a foreign state. In order to liaise with the central body of a foreign state, cooperation is carried out through the networks operating in the field of international legal cooperation. In some cases, it is done directly through diplomatic channels.

During 2020, the Prosecutor General's Office received one request from the competent authority of the Russian Federation, according to which it was required to seize the property of the person accused in the RA. The request was in relation to high-level corruption case of a large-scale embezzlement. The request to confiscate immovable property (several houses) was executed within 3 months.

Armenian authorities confirmed that if there is a delay in the execution of the requests, it is usually due to the need to translate the documents attached to the request, the incompleteness of the materials, procedures or due to the deadlines foreseen by domestic legislation.

Benchmark 11.2.6.

Requests to foreign jurisdictions for asset identification, tracing, seizure or confiscation in corruption cases (including non-conviction based forfeiture, if available) are made without delay

In 2020, 42 requests have been sent to the competent foreign authorities in corruption cases. 1 request was rejected, 31 are in process, and 10 requests were executed. It should be taken into consideration that not all requests were related to the identification and confiscation of assets.

It seems that cooperation with the foreign authorities is well established. Government provided an example of the MLA request sent to the US counterpart authority regarding a corruption-related offence that involved a high-ranking official and his affiliates. Armenia received information that the US has its own investigation related to the same facts. Several calls were arranged with the US colleagues to figure out the best

directions of cooperation. The MLA request is pending. Calls with the US counterpart authority are of continuous nature for different MLA requests.

The law enforcement agents highlighted the need in training on how to organize the return of proceeds from abroad once the MLA request is approved by the foreign authority, and there is a need to execute it.

Indicator 11.3. Confiscation measures are enforced in corruption cases

Background

The previous monitoring reports highlighted that the Government of RA does not maintain statistics on confiscation. It was recommended to complement criminal statistics on corruption-related offences with data on the seized and confiscated property.

Assessment of compliance

Benchmark 11.3.1.

Provisional measures are routinely applied to prevent the dissipation of assets

According to Article 14 of the Law on Civil Forfeiture of Illegal Assets, the specialised Department within the GPO may ask the court to apply provisional measures for securing the claim.

Within the framework of 10 studies conducted by the Department, applications were also submitted for the use of means of preliminary enforcement of the claim, which have already been satisfied; decisions were sent for enforcement and the property/property of the relevant persons was seized. However, due to the lack of information on application of provisional measures in cases of criminal confiscation, it is impossible to assess how provisional measures are used to prevent the dissipation of assets.

Benchmark 11.3.2.

Confiscation of instrumentalities and proceeds of corruption offences is routinely applied and executed

In criminal cases investigated during 2020, the vast majority of which are corruption cases, the damage caused by the crime to the state or communities, according to preliminary estimates (taking into account that the cases under investigation can be changed) amounted to about AMD 227 billion. In 2020, during the preliminary investigation of criminal cases, damage in the amount of AMD 14,2 billion was restored.

The government did not provide any documents from the list of proving materials to show that confiscation of instrumentalities and proceeds of corruption offences is routinely applied and executed.

Benchmark 11.3.3. – 11.3.8.

BENCHMARK	Country Data 2020		Score	Level
	Total	Per 1 million of population		
11.3.3. Track record of confiscation of derivative (indirect) proceeds of corruption offences	-	-	**No points**	**No points**
11.3.4. Track record of confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	-	-	**No points**	**No points**
11.3.5. Track record of confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	-	-	**No points**	**No points**
11.3.6. Track record of confiscation of mixed proceeds of corruption offences and profits therefrom	-	-	**No points**	**No points**
11.3.7. Track record of non-conviction based confiscation of instrumentalities and proceeds of corruption offences	-	-	**No points**	**No points**
11.3.8. Track record of extended confiscation in criminal cases	-	-	**No points**	**No points**

Indicator 11.4. The return and further effective and transparent disposition of the corruption proceeds is ensured

Assessment of compliance

Benchmark 11.4.1.

BENCHMARK	Country Data 2020		Score	Level
	Total number of proceeds	Total number of returned proceeds (%)		
11.4.1. Track record of the return of corruption proceeds from abroad	-	-	**No points**	**No points**

Benchmark 11.4.2.

There is a wide perception among the main stakeholders that the transparent and effective use, administration and monitoring of returned proceeds is ensured, and their disposition does not benefit persons involved in the commission of the respective corruption offence.

Civil society attracted attention to the issue of the management of assets, but the discussions did not touch upon the questions of the returned proceeds. No information was provided to allow assessment under the present indicator.

Indicator 11.5. Management of seized or frozen assets is cost-efficient and transparent

Assessment of compliance

Benchmark 11.5.1.

Regular audit of the management of assets subject to provisional measures and confiscated assets in corruption cases, including on its cost-efficiency, is conducted by external independent auditors and its results are publicly available

The monitoring team encourages Armenia to publish annual reports of the audits of the management of assets subject to provisional measures and confiscated assets in corruption cases, including on its cost efficiency. Also, the audit should be conducted by external independent auditors.

In Armenia, the function of management of assets is not assigned to a specialised body and the audit of management of assets is not conducted. Several NGOs raised the question of the non-transparency of the confiscation procedures and of the assets management. The state budget does not reflect how much money was confiscated in corruption cases, and how they are spent by the government.

Benchmark 11.5.2.

Where possible, contracting of private sector actors as asset managers and disposal of seized or confiscated assets is conducted on a competitive and transparent basis

The State may transfer the seized or confiscated assets to a trust, if special management of assets is necessary for securing the value of assets. On December 17, 2020, the RA government adopted a Decision No. 2066-N that provides a basis for contracting trust through an open tender within the framework of asset recovery procedures.

The benchmark requires involvement of private actors as asset managers and disposal of seized or confiscated assets to be conducted on a competitive and transparent basis in all cases when it is possible.

Armenia did not provide any information on this issue. In addition, information on the disposal of seized assets is not available, as the cases are still pending.

Benchmark 11.5.3.

A database of assets in corruption cases placed under the management of the state, which contains data on location, value, and other relevant information about the respective assets, is maintained and published online

Armenia did not provide any information regarding the database of assets in corruption cases placed under the management of the State.

Indicator 11.6. Data on asset recovery and asset management in corruption cases is collected, analysed and published

Assessment of compliance

There are general statistics on enforcement of corruption offences, but they lack details on seizure and confiscation measures.

Benchmark 11.6.1.

Comprehensive statistics on the application of seizure and confiscation measures in corruption cases is collected, analysed and regularly published online

Information is not available.

Benchmark 11.6.2.

Regular, at least annual, reports containing detailed statistics related to the work of officials dealing with identification and tracing of corruption proceeds, as well as with the management of assets subject to restraining measures and confiscated assets, including information on the outcomes of their work, are published online

Information is not available.

12 Investigation and Prosecution of High-Level Corruption

The portfolio of investigated and adjudicated corruption cases does not seem to change a lot. Due to the lack of information on high-level corruption cases finished with a conviction, it is difficult to assess the effectiveness of the system. There was a number of investigations and indictments of high ranking officials in the last years, but it is not clear whether the offences in question fall into the high-level corruption category, as delineated by the monitoring tools. High-level corruption cases are not reflected as a separate category in the statistics on adjudication of corruption, while statistics on detection, investigation and prosecution of corruption cover some data on high-level officials, but do not include information on high-level corruption, as defined by the Guide to Performance Indicators.

Indicator 12.1. Fight against high-level corruption is given a high priority

Background

For the purposes of the pilot monitoring, "high-level corruption" means corruption offences involving: 1) in any capacity punishable by criminal law (e.g. as masterminds, perpetrators, abettors or accessories) the high-level officials; and 2) substantial benefits for the officials or their family members or other persons (e.g. legal persons they own or control, political parties they belong to) and/or significant damage to public interests[27].

"High-level officials" are the following appointed or elected officials: the President, members of Parliament, members of Government and their deputies, heads of executive and other central public authorities and their deputies, the staff of private offices of political officials, governors, mayors of country's capital and regional capital cities, judges, prosecutors, top managers, and executive and supervisory board members of the 10 biggest SOEs in the country, and any other officials defined as politically exposed persons under the national law.

[27] For the purposes of performance indicators, a substantial benefit or significant damage, if they are of a pecuniary nature, shall mean any such benefit or damage that is equal or exceeds the amount of 3,000 monthly statutory minimum wage fixed in the respective country.

Assessment of compliance

Benchmark 12.1.1.

Convictions in high-level corruption cases are among key criteria for the assessment of the effectiveness of anti-corruption policy

According to the Government, the Anti-Corruption Strategy and its Implementation Action Plan 2019-2022 address the issue of reducing level of corruption offences with a main focus on high-level corruption cases. However, the number of convictions in high-level corruption cases as such is not among key criteria for the assessment of effectiveness of the Strategy or of the Action Plan.

Based on the analysis of the answers to the questionnaire and various documents submitted by the government, the monitoring team assumes that the fight against high-level corruption is prioritized in Armenia. For instance, the Ministry of Justice periodically requires law enforcement bodies to submit statistical data on corruption cases, including high-level corruption. In addition, Armenia has made a step forward in tackling high-level corruption by adopting the Law on the Anti-Corruption Committee. The establishment of the specialized investigative body will have a positive impact on the number of concluded corruption cases.

However, compliance requirement is narrowed to the use of the number of convictions in high-level corruption cases as a key indicator for assessing effectiveness of anti-corruption policy.

Indicator 12.2. Criminal statistics on high-level corruption is published, analysed and used in updating policy

Assessment of compliance

Benchmark 12.2.1.

Detailed statistics on the detection, investigation, prosecution and adjudication of high-level corruption is regularly published online and used to change policy or practice if necessary

The Prosecutor General's Office publishes statistics on the results of investigation and prosecution of corruption crimes. The report is published annually. Nevertheless, it includes data only on the number of corruption cases opened, terminated or sent to court. The statistical data collected by the courts covers number of corruption cases ended with a final conviction and the total number of convicted persons with some types of sanctions applied.

Even though the PGO's report and courts statistics provide data with a breakdown by corruption offences, they do not cover separately statistics on detection, investigation, prosecution and adjudication of high-level corruption cases. Only the Special Investigative Service (SIS) collects information on the number of high-level ranking officials involved in investigation of corruption crimes, but such data is limited to the pre-trial stage and, therefore, reflects only cases sent to court with indictments or terminated cases.

The benchmark also requires that the national authorities use enforcement statistics to change policy or practice. Based on the criminal statistics, the Prosecutor General's Office prepares comparative analysis and conclusions aimed at improving policies and practice in the field of combatting corruption. However, civil society tends to disagree with the statement that anti-corruption bodies discuss enforcement statistics and make recommendations for updating relevant policies. The reforms are implemented, but there is no evidence that the policy changes were driven by the results of the statistical analysis.

The monitoring urges the need to consider collecting on a central level statistics on top corruption cases and high-level officials involved in such cases.

Indicator 12.3. High-level corruption is actively detected and investigated

Assessment of compliance

Benchmark 12.3.1.

Analytical sources of information, at least FIU reports and asset and interest declarations, are routinely used for the detection of high-level corruption

In 2020, the Financial Monitoring Centre, performing functions of the FIU, disclosed 20 cases to investigative bodies in relation to corruption offences. Corruption was detected based on the analysis of the cash flows mostly of high-level officials. Therefore, the referrals from the financial intelligence unit were used for the detection purposes.

In 2019, Ethics Commission for High-Ranking Officials submitted 6 reports to the Prosecutor General in relation to the intentional failure of submission of declarations, while there were no such cases in 2020.

At the same time, asset declarations of 8 high-ranking officials (3 judges, 3 MPs, a Head of the State Revenue Service and a former Minister of Finance) were used to identify corruption related corpus delicti during criminal proceedings. Apparently, declarations were used during the investigation proceedings to clarify the circumstances of the case, but not for the detection purposes. In addition, according to the government, other analytical sources, such as referrals from the State Supervision Service of Armenia and reports of the State Statistics Committee are regularly used to detect new corruption cases. However, Armenian authorities did not provide any supporting materials to back up this information.

Benchmark 12.3.2.

Requests of foreign jurisdictions for information or legal assistance in high-level corruption cases, if received, are executed without delay

The national legislation does not indicate any timeframe for processing MLA requests. According to the government, there were cases of delays related to procedural and other differences and inconsistencies between different issues established by the legislation of Armenia and different countries. It was mentioned that the translation needs, insufficient materials received from the inquiring authority, procedures and deadlines set up by the national legislation are among the main reasons for the delay in responding to

requests of foreign jurisdictions. Department of International Legal Cooperation of the General Prosecutor's Office sometimes returns requests for further clarification.

In 2020, Armenian law enforcement authorities received 1 incoming request in relation to high-level corruption. A special investigative unit has been set up to facilitate cooperation with Russian authorities. The request was executed in 3 months.

The practice shows that even if there are delays in executing incoming requests, they are justified and reasonable.

Benchmark 12.3.3.

Requests to foreign jurisdictions for information or legal assistance in high-level corruption cases of transnational nature are made promptly and without delay

In 2020, 42 requests were sent to the competent authorities of a foreign state in relation to corruption offences. Most of the incoming and outgoing requests are related to high-level corruption cases. According to the Government, reasons for delays in sending MLA requests have the same procedural nature as those mentioned under benchmark 12.3.3. for the incoming requests. In the framework of a specific inquiry to the US partners, a number of video calls were set up, during which urgent actions and issues were discussed. The request was sent in relation to the return of proceeds of corruption from the USA.

The monitoring team is not aware of any cases of delay in sending MLA requests.

Benchmark 12.3.4.

All public allegations of high-level corruption were investigated or justified decisions not to open an investigation were made

There is neither statistical data to make reference to, nor a report on the current issue. Nevertheless, the requirements of the benchmark are not met if there is at least one public allegation of high-level corruption on which the relevant authorities did not follow up. Contrary to expectations, it is doubtful that all public allegations of high-level corruption resulted in a criminal investigation.

During the on-site visit, Armenian NGOs attracted attention to public concerns in the case of tobacco seized in Russia.[28] Armenian authorities informed that criminal proceedings were not initiated in Armenia, because the process of the export from Armenia complied with the legislation requirements. However, the criminal case was opened in Russian Federation, but there is no information about it.

In addition, a popular Armenian Youtube blogger made several allegations against a former Minister of Defence regarding kickbacks in the procurement of weapons.[29] The allegations should have been known to authorities, because they drew significant public attention. The Armenian authorities argue that in November 2015 the Prosecutor General sent the relevant materials to the National Security Service. Based on the results of the operational-investigative measures, the NSS concluded that relevant materials did not prove the involvement of the former Ministry of Defence in this case.

Later, the National Security Service initiated an investigation on the fact of abuse of official powers and embezzlement by the former Minister of Defence. According to the investigative authorities, the offences were committed during the process of supplying ammunitions to the Armed Forces of the RA. The former Minister of Defence and the director of the supplying company were detained on suspicion of embezzlement. The charges were brought against them for the embezzlement of more than AMD 2 billion. In addition, prosecution against former and current high-ranking officials of the RA Armed Forces has been initiated within the framework of the criminal case for abuse of power and commission of official forgery with severe material consequences.

The National Security Service of Armenia informs that operational search activities and investigative actions continue in this criminal case.[30] Other episodes of the case are being investigated by the NSS.[31]

The monitoring team was also told that investigation of corruption cases depends on whether the involved perpetrator represents the “old camp” or the incumbent government. The government presented an opposing opinion. The facts prove that numerous investigations are conducted against the members of the current government. Based on the information received from Armenian authorities, it becomes clear that portfolio of investigated corruption cases is slowly changing and more investigations involve top-level officials. For instance, charges were brought against the former Minister of Education andScience for receiving a bribe of particularly large amount. There is also a criminal case opened against the former Chairman of the Urban Development Committee, who was charged with abuse of official powers (art. 308 of the CC), receiving a bribe of particularly large amount (art.311 of the CC) and illegal participation in entrepreneurial activity (art. 310 of the CC).

[28] Aysor (2020), В России задержали самолет с 40 тоннами контрабандных сигарет, который направлялся с Еревана в Афганистан.

[29] OCCRP (2021), Экс-министра обороны Армении задержали по делу о хищении 4,6 миллиона долларов.

[30] National Security Service of the Republic of Armenia (2021), Message of 30 September 2021.

[31] National Security Service of the Republic of Armenia (2021), Cases of abuse of official authority and official falsifications by a high-ranking official of the RA Armed Forces in the process of supplying ammunition for the needs of the RA Armed Forces have been revealed.

Benchmark 12.3.5.

Asset recovery practitioners are routinely involved in the investigation and prosecution of high-level corruption cases

According to the Armenian authorities, the Department of Confiscation of Illicit Assets within the Prosecutor General's Office can and should be involved in the investigation and prosecution of high-level corruption cases. However, its competence is limited to the recovery of assets in civil proceedings. Armenian authorities did not provide examples, which would prove that involvement of asset recovery practitioners in the identification, tracing or return of proceeds of high-level corruption offences is systematic.

Still, the government argues that prosecutors of the Department of Supervision of the Legality of Pre-Trial Proceedings in the NSS were involved in the prosecution of high-level corruption cases.

To conclude, the Department of Confiscation of Illicit Assets mainly deals with cases of illicit enrichment, and there are no specialised asset recovery practitioners in the PGO, SIS and NSS.

Indicator 12.4. Liability for high-level corruption offences is effectively, independently and impartially enforced

Assessment of compliance

Benchmark 12.4.1.

There is a wide perception among the main stakeholders that the cases of high-level corruption are investigated, prosecuted and adjudicated independently and impartially without political or other undue interference

Discussions with the representatives of the civil society revealed that there is a strong perception among the key non-governmental stakeholders that cases of high-level corruption are not investigated, prosecuted and adjudicated independently and impartially without political or other undue interference.

Some representatives of the civil society claim that there is no political will to prosecute high-level corruption. The investigations are impacted by the position of the person involved in the corruption scheme: whether he/she is from the old regime or represents the new elite.

The government proved that there are few cases of top level corruption, in particular, against the former Armenian president,[32] previous and current high ranking officials (cf. benchmark 12.3.2.), but the civil

[32] RFERL (2019), Former Armenian Leader Sarkisian Charged with Corruption.

society is persuaded that there could be more proceedings initiated, if there was a fair and proper investigation of such cases.

Benchmark 12.4.2.

The progress of investigation and trial in high-level corruption cases, as well as decisions on the conclusion of investigations or not to open an investigation in such cases are routinely communicated to the public

The Prosecutor General's Office regularly publishes press releases with the summary information on the annual results of the criminal fight against corruption. Such reports include information on the number of opened criminal cases, decisions to prosecute or not to prosecute, pre-trial detention measures applied and trial results of such cases.

The breakdown by the type of corruption offences is reflected in the published data. However, the reports of the PGO provide aggregated statistical data on investigation of corruption offences. The information is often presented with a breakdown by the type of crime or high-risk areas that are extremely vulnerable to corruption. They do not focus on investigation and prosecution of high-level corruption offences.

Nonetheless, the prosecutors supervising the legality of the preliminary investigations collaborate with media to communicate the results of investigation of specific corruption cases of public interest, including cases sent to court with indictments. They usually publish comprehensive comments, justifications, and clarifications on the circumstances of such cases.

In 2020, the PGO published 57 press releases providing information on the process, interim or final results of the investigation of concrete corruption criminal cases involving high-level officials. The courts of different levels publish information on the trial, namely the data about beginning of court hearings, oral arguments, interim decisions on the detention, bail or seizure/freezing of assets, judgement, appeal, hearings in and final decisions of higher courts.

Benchmark 12.4.3. – 12.4.5.

BENCHMARK	Country Data 2020		Score	Level
	Total number of proceeds	Total number of returned proceeds (%)		
12.4.3. Track record of convictions for high-level corruption	-	-	**No points**	**No points**
12.4.4. Track record of convictions of high-level officials who were in office at the beginning of investigation	-	-	**No points**	**No points**
BENCHMARK	Country Data 2020		Score	Level
	Total	%		
12.4.5. Track record of recovery of corruption proceeds from abroad in cases of high-level corruption	-	-	**No points**	**No points**

Benchmark 12.4.6.

At least 50% of final sanctions for high-level corruption entail imprisonment without conditional or another type of release

The data on sanctions applied specifically in high-level corruption cases is not available.

Benchmark 12.4.7.

A prohibition from holding public office is applied to all persons convicted for high-level corruption

According to authorities, legal regulations concerning high-level officials contain rules that prohibit convicted person to hold public office. The rules on the selection and appointment of public officials usually include a criterion that a candidate should have a clear criminal record.

However, Armenian authorities did not provide information nor on the number of persons convicted for high-level corruption, neither on the number of convicted persons removed from the public office.

13 Specialised Anti-Corruption Investigation and Prosecution Bodies

The functioning of the specialised anti-corruption law enforcement bodies is difficult to be assessed due to the ongoing changes in this field. The actual structure can be seen as semi-specialized because of the exceptions and overlaps of competences, both at the level of investigation and prosecution of corruption cases. The specialisation in practice is often nominal, as anti-corruption investigators and prosecutors often deal with other types of crimes. The envisaged changes in the legislation affect drastically the institutional framework, aiming at creating more effective environment for the investigation of high-level corruption cases. The establishment of the Anti-Corruption Committee (ACC) brings Armenia closer to the level of specialisation required by international standards. Still, the ACC is not yet operational, so it is impossible to evaluate whether a stand-alone body will be better performing in investigation of corruption in Armenia.

Indicator 13.1. The anti-corruption specialisation of investigators is ensured

Background

Table 13.1. Anti-Corruption Specialisation of Investigators

Special Investigation Service (SIS)	Exclusively investigates some offences regardless the subject to be investigated. These include corruption related offences, such as illicit enrichment (Article 310-1 of the Criminal Code), deliberate failure to file declarations to the Ethics Committee by high-ranking officials (Article 314-2 of the Criminal Code), falsification of declarations or concealment of data subject to declaration (Article 314-3 of the Criminal Code),	Investigation Department for Corruption, Organized and Official Crimes
Investigative Committee	All corruption-related offences, including bribery, trading in influence, abuse of office, commercial bribery, etc., committed by anyone. Competent if case was not specifically assigned for investigation to the SIS	Department for Investigation of Corruption Crimes, Crimes against Property and Cybercrimes
National Security Service	Offences committed by employees of the SIS	Division for Investigation of Cases on Crimes Committed by Officials of the SIS, as well as of Cases on Corruption, Organized and White-Collar Crimes
State Revenue Committee	Corruption offences without any clear specialisation	Investigation Department

Police	Operative-searching and criminal procedural measures for the purposes of prevention, detection, investigation of corruption offences, initiation of the criminal proceedings	Department on Combating Corruption and Economic Crimes of the General Department of Criminal Police

Source: 4th round monitoring report of Armenia

Assessment of compliance

Benchmark 13.1.1.

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

The establishment of a stand-alone body, which would be specialised only in investigation of corruption offences, is still in the process. The new model will be introduced next year, and all pre-trial criminal proceedings in corruption cases, including operative-intelligence measures, will be carried out by the Anti-Corruption Committee (ACC). According to the Law on the Anti-Corruption Committee, adopted in March 2021, the Special Investigative Service will transfer all corruption-related cases to the newly established Anti-Corruption Committee. Once operational, the ACC will have an exclusive competence for conducting pre-trial criminal proceedings and carrying out criminal intelligence operations in cases of alleged corruption.

As of today, the investigative functions are still dispersed among multiple agencies.

The investigative agencies of Armenia that are currently mandated by law to conduct investigations of corruption offences are as follows: the Investigative Committee; the Special Investigation Service; the Investigation Department of the State Revenue Committee; and the Investigation Department of the National Security Service. None of the mentioned bodies has an exclusive competence over investigation of corruption offences.

Additionally, the CEHRO initiates investigations into false asset declarations and makes referrals to criminal investigators, if it determines that there are grounds to consider opening a criminal case.

The Criminal Procedure Code (CPC) defines the investigative competences of the abovementioned agencies. In most of the cases, the CPC clearly delineates jurisdiction over different corruption offences. Article 190, Part 8 of the Criminal Procedure Code prescribes that for a number of crimes an alternative jurisdictions rule applies. The corruption-related offences that fall under this rule are commercial bribery (Article 200 of the Criminal Code), abuse of office (Article 308 of the CC), excess of official powers (Article 309 of the CC), unlawful participation in business (Article 310 of the CC), and official forgery (Article 314 of the CC). If the CPC envisages a possibility of alternative competences over corruption cases, the body that detected the case should carry out the investigation. If there is a negative or positive conflict of investigative competences over corruption cases, the prosecutor decides on assignment of cases.

If the issue of overlapping jurisdiction rises between the investigators of the National Security Service or customs authorities (Art. 190 (4)of the CPC), or between the Investigative Committee and tax authorities (Art. 190(2) of the CPC), the Criminal Procedure Code gives competence to the investigative body, which instituted the criminal proceedings. Pursuant to Part 7 of Article 190 of the CPC, this rule applies, except if the prosecutor decides differently on the assignment of the case.

According to the monitoring Guide, in case of multiple bodies dealing with corruption offences, the one dealing with high-level corruption should be assessed for the purposes of this monitoring exercise. Therefore, the focus is placed on the Special Investigation Service.

The Special Investigation Service was created in 2008 as the only investigative body authorised to conduct preliminary investigations of offences committed by high-level officials. Specifically:

- managing officials of legislative, executive and judicial bodies of the Republic of Armenia;
- persons, performing special state service in relation to their official positions, pursuant to RA Criminal Procedure Code.

However, it should be noted that corruption cases of high-ranking officials are often investigated not only by specialised investigators, but also other SIS investigators. Very often the SIS investigators deal with other cases along with corruption, because a prosecutor can assign a non-corruption related case to the specialised department of the SIS (article 190 CPC). Some high-level corruption cases, in particular corrupt acts committed by the SIS investigators, may be investigated by the National Security Service.

The semi-specialisation and the ambiguity of some rules on the assignment of investigations may negatively affect investigation of corruption offences.

Benchmark 13.1.2.

Corruption cases are not removed or only removed from the specialised anti-corruption body, unit, investigator on legally established grounds, following clear criteria for transferring of such proceedings

According to Article 53 of the Criminal Procedure Code, the Prosecutor's Office may transfer a criminal case from one preliminary investigation body to another in cases foreseen by Article 190 of the CPC.

Pursuant to Part 10, Article 190 of the CPC, if multiple bodies are competent, or if the investigative body detected a crime, which is already subject to investigation by another investigative body, the issue of overlapping jurisdiction is resolved by the prosecutor.

High-level corruption crimes, investigated by the SIS, are excluded from the field of application of the current article. In addition, the rule does not apply to the investigation of corruption crimes committed by officers of the SIS – such cases remain under the competence of the National Security Service. In addition, these rules apply only to criminal investigations of corruption offences, not covered by Part 8 of Article 190 of the CPC. As mentioned above, investigation of commercial bribery, abuse of official powers and official forgery should be investigated by a body that disclosed the crime.

However, pursuant to Part 6 of Article 190 of the CPC, the Prosecutor General may transfer some corruption-related cases to the investigators of the Special Investigation Service (sometimes, to the NSS). Therefore, the reassignment of corruption-related cases works only one way: corruption cases, exclusively investigated by the SIS, cannot be transferred to another investigative body. In 2020, 19 criminal cases were transferred to the Special Investigative Service from the Investigative Department of the National Security Service.

However, a prosecutor can not only reassign a high-level corruption case to the SIS, but it can also reshuffle investigation of any corruption cases between other investigative bodies, if there is a need to "guarantee comprehensive, full and objective investigation".

The grounds for transferring cases are ambiguous. The wording "a need to guarantee comprehensive, full and objective investigation" leaves place for manipulation and circumvention and does not ensure impartiality and autonomy of the prosecutors from both external and internal pressure. The competent authorities claim to use the mechanism of reassignment of cases to ensure that there will be no potential conflict of interest or the breach of confidentiality during the investigation. Still, the ambiguous wording of the rule allows its broad interpretation and leaves room to illicit interference.

Benchmark 13.1.3.

A specialised task force, unit or body to investigate and/or prosecute high-level corruption is established within the criminal justice system and there are no cases of breach of its jurisdiction

This benchmark requires establishment of exclusive investigative and/or prosecutorial jurisdiction for high-level corruption cases in law and ensuring strict observance of such jurisdiction in practice.

In principle, investigation of crimes committed by high-ranking officials and crimes related to official position of persons performing state service is assigned to the investigators of the Special Investigation Service (SIS). The Investigation Department for Corruption, Organized and Official Crimes was created within the SIS for such purposes. Nevertheless, corruption crimes are also investigated by the investigators from other SIS departments. A certain sub-specialisation of investigators is in place, but in practice, there is no body or unit, which would have an exclusive competence for investigating high-level corruption cases. In the nearest future, the Anti-Corruption Committee will conduct pre-trial criminal proceedings in cases of high-level corruption.

The civil society did not report any case, which would prove the breach of jurisdiction of the SIS.

Also, the government did not provide the number of investigated corruption cases that fall under the category of "high-level", as defined by the monitoring Guide.

Indicator 13.2. The anti-corruption specialisation of prosecutors is ensured

Assessment of compliance

Benchmark 13.2.1.

Prosecution of corruption offences is assigned in the legislation to a dedicated body, unit or a group of prosecutors, which specialise in combatting corruption

The legislation does not assign prosecution of corruption offences to a specialised body. Nevertheless, there is a specialisation of prosecutors within the Prosecutor General's Office.

The Department for Combatting Corruption Crimes within the Prosecutor General's Office is responsible for the oversight of investigation and prosecution of corruption related cases. The prosecutors of the specialised Department can be instructed by the Prosecutor General or his/her Deputy. However, it is not clear whether other Departments within the Prosecutor General's Office also deal with corruption offences. For instance, all corruption cases investigated by the Special Investigation Service are supervised by the Department of Supervision over Legality of Pre-trial Proceedings in the SIS and NSS of the Prosecutor General's Office.

All territorial subdivisions of the RA Prosecutor's Office ensure specialization of the prosecutors in separate criminal offences, including corruption offences. In the future, the anti-corruption specialisation of the prosecutors at the regional level will be organised according to the territorial arrangement of the ACC's units. Also, the establishment of the ACC will provoke structural changes within the Prosecutor General's Office.

Benchmark 13.2.2.

High-level corruption cases are presented in court by the specialised anti-corruption prosecutors

In practice, there is no real specialisation of prosecutors in corruption matter. Corruption cases can be presented in court not only by prosecutors from the Department on Combatting Corruption Crimes. Civil society attracted our attention to the case of the former head of the State Revenue Service, in which the prosecution was ensured by a prosecutor from the non-specialised department of the PGO.

Due to the lack of concentration of corruption cases within one department of the PGO, the supervision, prosecution and presentation of the high-level corruption case during the trial is done not only by specialised anti-corruption prosecutors.

Indicator 13.3. Appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based with their tenure in office protected by law

Assessment of compliance

Benchmark 13.3.1.

The current head of the specialised anti-corruption investigative body or unit was selected through a transparent and competitive selection procedure, using clear criteria based on merit

Because the mandate of most of the investigative bodies is much broader than investigation of corruption crimes, the monitoring focuses only on the selection procedure of the current head of the Investigation Department of Corruption, Organized and Official Crimes of the Special Investigation Service.

The head of the Special Investigation Service is appointed based on the procedure defined by the Law on the RA Special Investigative Service. Still, appointment and selection procedure of the Head of the SIS is

questionable in terms of transparency and competitiveness. The Government, upon the recommendation of the Prime Minister, appoints the head of the SIS; but there is no evidence that the current head of the SIS was appointed following a transparent and competitive selection procedure.

The Law does not provide any rules for the selection of the heads of departments. The vacancies are published on the website of the SIS and the heads of departments are appointed by the general order of the Head of the SIS. The selection should be done on a competitive basis, but the Law does not regulate this question in details.

In general, the legislation does not regulate the process of selection and appointment of the heads of departments, and in particular, of the Head of the specialised anti-corruption department of the SIS. The situation might improve after entry into force of the Law on the Anti-Corruption Committee, which foresees specific rules for the selection of its future head. The Law regulates each step and defines clear criteria for selection and appointment of the Chairman of the ACC. The very first appointment process of the Chairman will show whether the new rules do not allow excessive discretion of the decision-making body.

Benchmark 13.3.2.

An independent expert selection committee played a key role in the selection of the head of the specialised anti-corruption investigative body or unit

The legislation does not require creation of the independent expert committee for the selection of the head of the SIS, nor for the appointment of the Head of the specialised anti-corruption investigative unit within the SIS.

According to the Law on the Anti-Corruption Committee, a Competition Board will be specially designated for selecting candidates for the chair of the Anti-Corruption Committee. The Board will be formed from one candidate, nominated by each of the following bodies: Government, the National Assembly Council, the Supreme Judicial Council, the Prosecutor General, the Human Rights Defender, and two representatives of the civil society. The board members will have to make a merit-based decision on shortlisting 2-3 candidates. The final choice will be made by the Government.

Benchmark 13.3.3.

There is a clear and transparent procedure for dismissal of the head of the specialised anti-corruption investigative body or unit based on grounds that exclude political or other undue interference and there were no cases of dismissals outside of such procedure

In operating law enforcement bodies there are no specific regulations for dismissal of the head of the specialised anti-corruption investigative units. However, the Law on the Special Investigation Service foresees clearly and narrowly defined grounds for dismissal of the Head of the SIS based on objective facts. In particular, he/she can be dismissed in case of violation of incompatibility requirements or if he/she violated a ban on engaging in political activities, etc.

The current head of the SIS was appointed in June 2018, so the monitoring team will not examine the dismissal of his predecessor. The civil society and the government also did not raise any concerns about dismissal of the previous Head of the SIS.

Benchmark 13.3.4.

The current head of the specialised anti-corruption prosecutorial body or unit was selected through the transparent and competitive selection procedure, using clear criteria based on merit

This benchmark looks into appointment of the current head of the specialised anti-corruption prosecutorial body. Current head means the head who held the post at the time of the replies to the monitoring questionnaire or, if changed, during the on-site.

The current head of the Department for Combatting Corruption Crimes was appointed in January 2021 based on the general order of promotion.

According to the Government, the Prosecutor General appoints the head of the Department for Combatting Corruption Crimes from the number of persons included in the promotion list. The prosecutors are added to the promotion list in case of a positive conclusion of the qualification commission. In general, a person is included in the promotion list after working as a prosecutor at least for 4 years (during the last 10 years) without any disciplinary sanctions. The procedure of selecting one of the candidates from the promotion list leaves some questions regarding its transparency, as it is not clear what criteria are used for selecting a winning candidate from the promotion list. In addition, a Prosecutor General may submit a proposal to the qualification commission to include a prosecutor on the promotion list by submitting an appropriate assessment.

The assessment of the appointment of prosecutors under Performance Area 6 also shows that Prosecutor General has discretionary powers in selecting candidates from the promotion list.

The procedure for appointing both the prosecutors and the heads of departments of the Prosecutor General's Office has been revised. An ethics check mechanism has been introduced as a prerequisite for the appointment of the prosecutors. This is a substantial positive change since the last round of monitoring. The transparency and competitiveness of the selection procedures within the prosecutorial system still raise a lot of question. The monitoring concludes that a bottom-up review of the selection rules for the prosecutors should become a paramount task on the reform agenda of Armenian government.

Indicator 13.4. The staff of the specialised anti-corruption investigative body is impartial and autonomous from external and internal pressure

Assessment of compliance

Benchmark 13.4.1.

The assignment and re-assignment of cases among specialised anti-corruption investigators is based on clear and published rules that are set in the legislation and ensure impartiality and autonomy from external and internal pressure

Benchmark 13.4.2.

The current head of the specialised anti-corruption prosecutorial body or unit was selected through the transparent and competitive selection procedure, using clear criteria based on merit

The question of re-assignment of cases among different specialised anti-corruption investigative bodies is described under the benchmark 13.1.2.

The current benchmark looks into the rules of distribution of cases between the investigators. For the purposes of this benchmark, the monitoring will assess the assignment and re-assignment of cases among the investigators of the anti-corruption department of the SIS.

The Law on the Special Investigation Service does not regulate questions of distribution of criminal cases among its investigators. It is carried out in a general manner according to the workload, so a transparent case management system is not properly established.

Benchmark 13.4.3.

Specialised anti-corruption investigators routinely use the right to challenge orders from superiors through a judicial or another procedure

The benchmark looks into the practice of specialised anti-corruption investigators using the right to challenge orders from superiors. Armenia did not report cases in which investigators used such procedure.

Benchmark 13.4.4.

There is a wide perception among the main stakeholders that the specialised anti-corruption prosecutors operate independently and impartially without political or other undue interference in their work

The benchmark looks into the practice of specialised anti-corruption investigators using the right to challenge orders from superiors. Armenia did not report cases in which investigators used such procedure.

Benchmark 13.4.5.

There is a wide perception among the main stakeholders that the specialised anti-corruption investigative body or unit operates independently and impartially without political or other undue interference in its work

The civil society has a strong negative opinion on the independence and impartiality of the specialised anti-corruption investigative units. The non-governmental stakeholders raised concerns regarding political and other undue interferences in the work of the Special Investigation Service and National Security Service.

For instance, in September 2018 recordings of conversation between the Head of the Special Investigative Service and the Head of the National Security Service were leaked[33]. The main topics of the discussion were arrests of the 2nd President of Armenia and of the Secretary General of the Collective Security Treaty Organization (CSTO). The wiretapping mentions how one of the judges called the Head of the NSS to ask what decision needs to be made regarding restraining measures for the former President.

The same cases were in the centre of another scandal in which conversations between the Head of the National Security Service and the Prime Minister were leaked.[34] The content of the conversations were such, which would objectively give an unbiased listener perception that a Prime Minister personally intervened in sensitive investigations conducted by the Special Investigative Service and the National Security Service.

International standards require that specialised law enforcement bodies not only operate independently and impartially, but also are seen as such by public and stakeholders. Based on the surveys and answers to the monitoring questionnaire, anti-corruption investigative bodies are considered to be biased by the general public.

[33] Azatutyun (2018), Vanetsyan confirmed that the wiretapped phone conversation was actually with Khachatryan's participation.

[34] Eurasianet (2018), Leaked phone calls scandal poses new challenge for Pashinyan.

Indicator 13.5. The specialised anti-corruption investigative and prosecutorial bodies have adequate human and financial resources

Assessment of compliance

Benchmark 13.5.1.

Specialised anti-corruption investigative body or unit has the number of staff and resources sufficient to carry out functions within its mandate

Armenian government reports that there are currently 33 investigators working at the SIS, ten of whom are assigned to the Department for Investigation of Corruption, Organized Crime, and Official Crimes. The work of this Department is supervised by its Head, who reports to the Deputy Head of the SIS, who in turn reports to the Head of the SIS. All investigators are based in Yerevan, and they have more experience in corruption matter compared to the investigators of other departments. The investigators of this Department have been particularly trained in the investigation of corruption related crimes, and constant work is being carried out to improve their professionalism.

In 2020, the SIS investigated 395 cases, out of which 171 were investigated by the staff of the anti-corruption department. Therefore, the average caseload is equal to 17 cases per one investigator of the specialised department for investigation of corruption. During the on-site discussions, it was mentioned that the quality of investigations is negatively impacted due to the heavy workload. The staff closes investigations as fast as possible to be able to process all corruption cases.

The number of staff of the Investigation Department of the National Security Service of Armenia varies from 20 up to 26 investigators. Almost all of them are involved in investigation of corruption cases. During 2020, 212 corruption related criminal cases have been initiated in the Investigative Department of the National Security Service of the Republic of Armenia. The average workload is 8-10 cases per investigator.

Benchmark 13.5.2.

There is a sufficient number of specialised anti-corruption prosecutors to ensure prosecution of corruption cases

In 2019, the average workload of the prosecutor of the specialised anti-corruption department was around 29 cases. However, it should be noted that out of 91 specialized prosecutors, only 7 prosecutors of the specialized anti-corruption subdivision of the Prosecutor General's Office were engaged exclusively in prosecution of corruption offences, while others performed prosecutorial functions in non-corruption criminal cases. As of today, there are 10 staff positions in the Department for Combatting Corruption Crimes of the Prosecutor General's Office, 1 of which is vacant.

At the same time, the assignment of corruption cases to the prosecutors of other departments of the PGO shows that there is an issue of insufficient staffing of the specialised anti-corruption unit of the Prosecutor General’s Office.

Benchmark 13.5.3.

The funding received by the specialised anti-corruption investigative body or unit is sufficient to ensure its autonomy

The annual budget of the SIS is approved by the National Assembly. Funding is approved annually, but a three-year medium-term public expenditure plan is submitted each year. The reports on the implementation of the state budget are submitted to the Ministry of Finance, and a reporting to the National Assembly is done on a quarterly basis. The SIS is also subject to an annual audit.

In 2020, the budget allocated to the SIS was approximately AMD 757 million (approximately USD 1,5 million). The budget increased in comparison to the previous year due to the growth of the number of the SIS staff.

Whether funding is sufficient or not should be established by the monitoring team in the country context, considering the mandate, number of staff, the funding compared to other public agencies, any shortages in resources, and technical capabilities. The evidence can include statistics on requested, approved and implemented budget, but such data was not provided by Armenia.

Benchmark 13.5.4.

The level of remuneration of the specialised anti-corruption investigators is fixed in the law and is sufficient to ensure their independence and reduce the risk of corruption

The Law on Remuneration of Public Officials regulates the level of remuneration of the investigators. The Law does not include special regulations, which would apply only to the anti-corruption investigators.

The average monthly salary of the investigators of the Special Investigative Service of the Republic of Armenia is AMD 500 000 (~USD 795). A senior investigator on particularly important cases is paid –AMD 601 000 (~USD 957), a deputy head of the department – AMD 644,000 (~USD 1 026), a head of the department – AMD 687 000 (~USD 1 094). It is worth to mention that investigators receive monthly bonuses.

The salary of the specialised anti-corruption investigators in the SIS does not differ from the salary of the investigators in other SIS departments. It is hoped that future salary arrangements for the specialized anti-corruption investigators defined by the Law on the Anti-Corruption Committee will be sufficient to ensure the independence of the anti-corruption investigators.

Indicator 13.6. The specialised anti-corruption investigative body has necessary powers, investigative tools and expertise

Assessment of compliance

Benchmark 13.6.1.

Specialised anti-corruption investigative body or unit has powers, expert and technical capacity to conduct analytical work, financial investigations and covert operations, including wiretapping

To be compliant with the benchmark, the specialised investigative unit should have at least the following powers: carrying out covert surveillance, intercepting communications, conducting undercover investigations, accessing financial data and information systems, monitoring financial transactions, freezing bank accounts, and protecting witnesses. Application of these powers may be subject to prior authorisation by the prosecutor or judge.

According to the Government, implementation of financial investigations and covert operations is assigned to the relevant officers of investigative bodies that can perform these functions on the basis of relevant orders of the body conducting the proceedings.

If highly specialized knowledge in the field of science, technology or other is necessary, the investigators, who carry out the proceedings, order appropriate examinations, professional checks and audits.

However, according to the Law on Operative-Investigative Activities of Armenia, the bodies that can carry out operational-investigative activities are Police, Military Police, and National Security Service, customs and tax authorities, and Penitentiary Service. The investigative bodies do not have powers to perform operative-investigation work. The specialised anti-corruption staff of the Investigative Department of the National Security Service (NSS), Special Investigation Service and of the Investigative Committee does not carry out wiretapping. Therefore, there are no in-house non-legal experts in economic and financial investigations to conduct covert operations, including wiretapping, within the SIS. After obtaining a court permission, execution of covert operations is entrusted to the relevant division of the NSS or Police. Nevertheless, according to Article 233 of the CPC, in particular circumstances, the SIS investigators can freeze bank accounts or arrest property of the suspect or accused.

There will be a special department in the Anti-Corruption Committee, in which investigators will be mandated the right to carry out operative-investigative activities.

To conclude, the specialised anti-corruption investigators do not have sufficient powers to conduct effective analytical work, financial investigations and covert operations.

Indicator 13.7. Work of the specialised anti-corruption prosecutors and anti-corruption investigative body or unit is transparent and audited

Assessment of compliance

Benchmark 13.7.1.

Periodic, at least annual, reports containing detailed statistics related to the work of the specialised anti-corruption investigators and prosecutors, including information on the outcomes of cases are published online

The Prosecutor General's Office publishes a report on investigation of corruption crimes and a report that is submitted to the National Assembly.

The activity report of the Prosecutor General's Office is very detailed and covers both investigation and prosecution of corruption offences. The annual report includes data collected by the investigative bodies. The report covers detailed statistics on the work of the specialised investigators and prosecutors, including number of opened and sent to court cases, number of cases in which charges were brought and number of terminated investigations.

However, high-level corruption cases do not form a separate statistical category in the PGO's report. Moreover, information on the number of requests to apply covert investigative techniques is missing.

Benchmark 13.7.2.

External performance evaluation of the specialised investigative body or unit by an independent expert committee (formed by professionals, who are selected through a transparent procedure based on merit) is conducted regularly against a defined set of criteria and its results are published

There is no formal procedure to measure how the Special Investigation Service or other anti-corruption units within the respective investigative bodies have implemented the tasks prescribed to them by legislation.

Indictaor 13.8. Specialised anti-corruption investigators and prosecutors are held accountable

Assessment of compliance

Benchmark 13.8.1.

All public allegations of corruption perpetrated by the specialised anti-corruption investigators have been thoroughly investigated, with justified decisions taken in the end and made public

The following information was provided during the on-site visit: in 2020, there were 3 cases of corruption committed by the officers of the NSS and 1 case involving the investigator of the Investigation Committee. Only one case, involving an NSS officer, was sent to court with an indictment, two other cases were terminated on procedural grounds. However, the monitoring team is not aware of any public allegations of corruption perpetrated by the specialised anti-corruption investigators, which have not been properly investigated.

Benchmark 13.8.2.

All public allegations of corruption perpetrated by the specialised anti-corruption prosecutors have been thoroughly investigated, with justified decisions taken in the end and made public

The monitoring team is not aware of any public allegations of corruption perpetrated by the specialised anti-corruption prosecutors, which have not been properly investigated.

Benchmark 13.8.3.

Specialised anti-corruption investigative body or unit has functioning mechanisms for public oversight, such as public councils, which include key stakeholders selected on clear criteria and through a transparent procedure.

According to the Government, the legislative requirements for appealing decisions made by the bodies conducting the proceedings established by the RA Code of Criminal Procedure, mandatory consideration of submitted petitions, as well as regular publication of statistical data contain elements of public control. These are carried out on daily basis by the media, competent bodies and participants in different proceedings.

However, the monitoring cannot conclude that there is a functioning mechanism for public oversight of the work of the SIS or other investigative bodies. Even though some materials and non-confidential information necessary for such oversight are published, there is no participation of the representatives of civil society, academia, experts and others in decision-making of relevant bodies. There is nothing similar to a public council or a working group with real powers to carry out public oversight over relevant anti-corruption bodies.





Funded by the
European Union