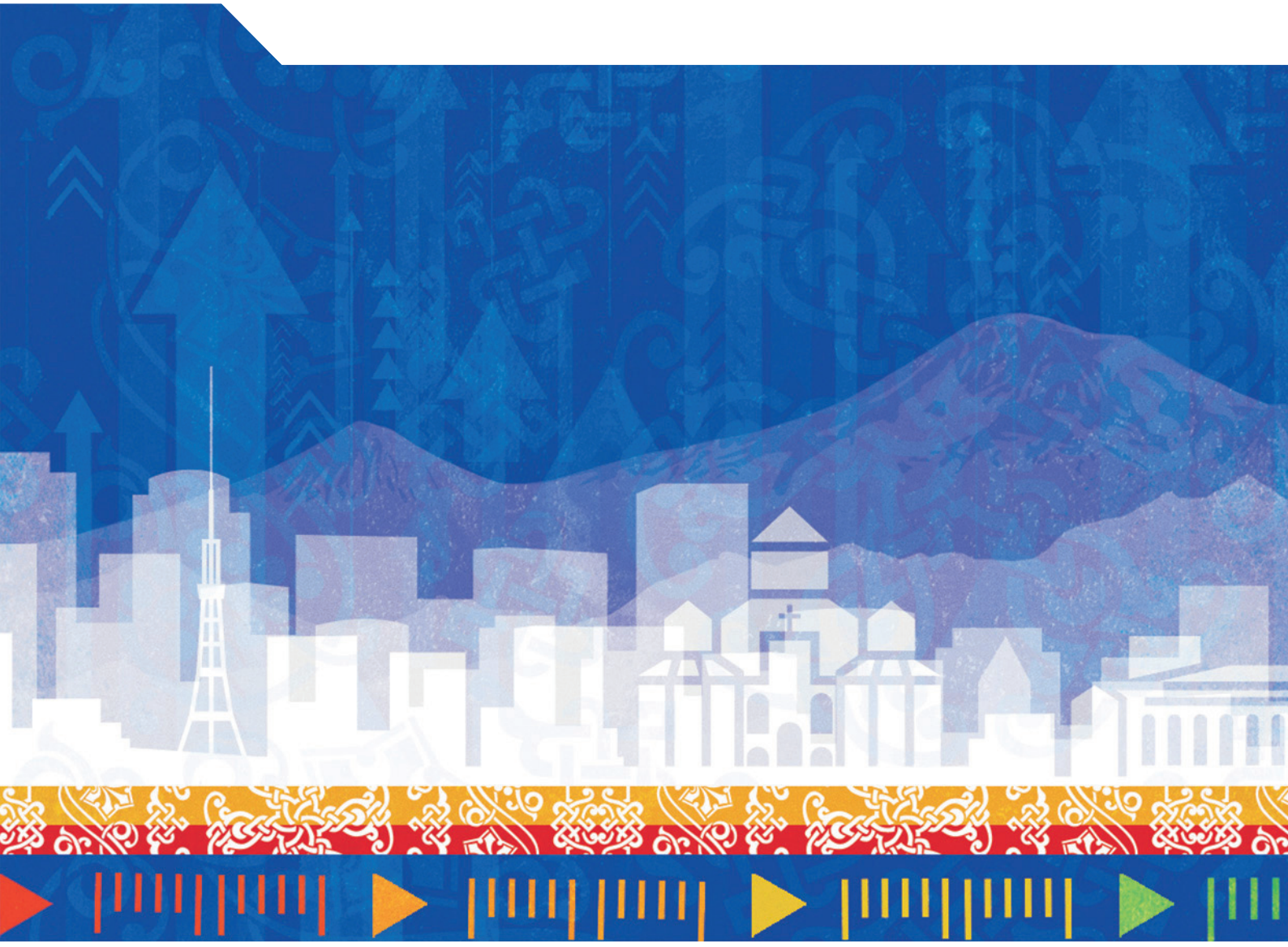
Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Armenia

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN



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Foreword

The present monitoring report was prepared within the framework of the 5th Round of Monitoring of the Istanbul Anti-Corruption Action Plan (IAP) - a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The IAP brings together ten countries from the region: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine and Uzbekistan. Other countries of the region, OECD countries, international organisations, and non-governmental partners participate in the implementation of the IAP as experts and donors.

The ACN introduced an indicator-based peer review for the IAP 5th Round of Monitoring (2023-2026). After the pilot that tested the new methodology was completed, the revised IAP 5th Round of Monitoring Assessment Framework and Monitoring Guide were agreed upon by the ACN Steering Group in November 2022. The framework benefited from a thorough and inclusive consultative process, marking strong ownership and commitment of the participating countries. The 5th Round of Monitoring was launched in January 2023 in Armenia, Azerbaijan, and Moldova with the support of the EU for Integrity Programme. Due to Russia's large-scale war of aggression against Ukraine, its review was conducted with a reduced substantive scope, covering selected areas under the Assessment Framework.

The monitoring team for Armenia included Mr. Daniel Belingher (Romania), Mr. Evgeny Smirnov (EBRD), Ms. Ludmila Chovancova (Slovakia), Ms. Mary Butler (USA), Ms. Olena Tanasevych (Ukraine), Ms. Sintija Helviga-Eihvalde (Latvia) and Ms. Stana Maric (EBRD). Ms. Anca Jurma, the IAP Vice-Chair (Romania), was a team leader for the monitoring. The Secretariat team also included Mr. Dmytro Kotlyar (Consultant), Ms. Natalia Baratashvili (Anti-Corruption Analyst), Ms Arianna Ingle (editorial support) and Ms. Gabriele Verbickaite (Administrative Assistant).

The coordination team from the Ministry of Justice of Armenia included Mr. Karen Karapetyan, Deputy Minister of Justice, IAP National Coordinator, Ms. Hasmik Tigranyan, Acting Head of the Anti-corruption Policy Development and Monitoring Department, Mr. Yeprem Karapetyan, Head of Division of Anti-corruption Policy Development of the Anti-corruption Policy Development and Monitoring Department, Ms. Tatevik Khachatryan, Chief Specialist of the Monitoring Division of the Anti-corruption Policy Development and Monitoring Department.

The assessment of Armenia was launched in December 2022. Armenia provided replies to the questionnaire with supporting materials between 4-11 March 2023. Responses to the questionnaire for non-governmental stakeholders were submitted by the Corporate Governance Center, Transparency International Anti-Corruption Center, Democracy Development Foundation, Law Development and Protection Foundation, Protection of Rights without Borders, and the National Center of Public Policy Research. The physical on-site visit in Yerevan took place on 17-21 April 2023 and included 14 sessions with governmental and non-governmental stakeholders, including the business community. The authorities provided comments on the first draft report on 22 June 2023. Non-governmental stakeholders (Law Development and Protection Foundation, Democracy Development Foundation, Transparency International Anticorruption Center, Protection of Rights without Borders, Corporate Governance Center, and National Centre of Public Policy Research) commented on the draft report. Following bilateral

consultations held in September and October, Armenia's monitoring report was discussed and adopted at the ACN Plenary meeting on 3-5 October 2023.

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Acronyms

ACC	Anti-Corruption Committee
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
AMD	Armenian Dram
CBA	Central Bank of Armenia
CPC	Corruption Prevention Commission of Armenia
COI	Conflict of interest
EAEU	Eurasian Economic Union
EBRD	European Bank for Reconstruction and Development
FH	Freedom House
IAP	Istanbul Anti-Corruption Action Plan
GRECO	Group of States Against Corruption
LCPC	Law on Corruption Prevention Commission of Armenia
LPA	Law on Procurement of Armenia
LPS	Law on Public Service of Armenia
LSW	Law on the System of Whistleblowing
NA	National Assembly of Armenia
NGO	Non-governmental organization
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
PA	Performance Area
PGO	Prosecutor General's Office
RA	Republic of Armenia
SOE	State-owned enterprise
SJC	Supreme Judicial Council
TI	Transparency International
UNCAC	United Nations Convention against Corruption
WEF	World Economic Forum
WB	World Bank
WTO GPA	Agreement on Government Procurement of the World Trade Organization

Methodology

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

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

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

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

Table 1. Performance level

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

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

Executive summary

The year 2022 marked significant changes in the anti-corruption framework of Armenia, with many initiatives aimed at strengthening the legislative framework and improving anti-corruption prevention and enforcement. They included changes in the conflict-of-interest management and whistle-blower protection legislation, the launch of mandatory disclosure of information on beneficial ownership of companies, strengthening the anti-corruption institutional set-up, the introduction of civil confiscation of unjustified assets, and of the criminal liability of legal persons. If implemented effectively, these initiatives will significantly improve the anti-corruption landscape in the country.

The ambitious anti-corruption policy documents of Armenia focused on strengthening the institutional set-up of the anti-corruption system and enhancing the legal framework. An inclusive and extensive public consultation process with the active participation of civil society contributed to the quality of the Anti-Corruption Strategy and its 2019-2022 Action Plan. The Anti-Corruption Department of the Ministry of Justice, performing the functions of the Secretariat of the Anti-Corruption Policy Council, significantly increased the quality of coordination, monitoring and evaluation of the anti-corruption policy. To achieve further progress, the country needs to address remaining deficiencies, including insufficient staff in the Anti-Corruption Department, secure high-level political support for the Secretariat, and address the low level of implementation of anti-corruption commitments.

In 2022, authorities significantly improved the legal framework for preventing and managing conflict of interest (COI), although many amendments were enacted outside the assessment period. While making efforts to align with international standards is a step forward, a harmonized and clear legal framework, including consistent COI rules for different categories of public officials, remains to be developed. The enforcement of COI rules was a challenge, with little tangible progress achieved in 2022. On the other hand, Armenia had a robust legal framework for asset declarations with a comprehensive coverage of public officials and a broad content of disclosure. The online declaration system was accessible to the public, and the scope of restricted data was limited. Verification of asset and interest declarations and routine application of administrative sanctions was ensured in practice. Besides, significant progress in setting up the Corruption Prevention Commission was recorded, which is commendable; however, the agency significantly lacked human, financial, and operational resources.

The Law on the System of Whistle-blowing presented a solid foundation for protecting reporters of corruption, although the enactment of recent changes in 2023 was outside the evaluation period. To further encourage reporting of corruption, authorities should build trust in the reporting channels and available protection measures. Further efforts to set up internal channels in the public sector in practice shall be made. An electronic platform was actively used for submitting whistle-blower reports. However, the provisions on the protection and different remedies available to whistle-blowers have not been tested in practice. The Human Rights Defender, responsible for monitoring the enforcement of the whistle-blower protection legislation, lacked a dedicated unit or staff.

The Corporate Governance Code aiming at establishing responsibilities of listed companies' boards to oversee risk management existed, but compliance with the code remained weak. The governance of five state-owned enterprises (SOEs) selected for the assessment was not in line with international standards,

the anti-corruption legislation did not cover SOEs, and corruption risks were high. The SOEs had a low level of transparency and poor reporting. In 2022, Armenia introduced the mandatory disclosure of the company's beneficial ownership. The definition of beneficial owner complied with the FATF standard; information about the beneficial owners was collected and published in machine-readable format. However, in 2022, the full scope of data on beneficial owners was available only in extractive sector companies. Armenia should take measures to ensure implementation of the disclosure requirements and enforce sanctions for a failure to submit or update information or false information about beneficial ownership. There was no dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities in Armenia, even though the business sector would welcome such a mechanism.

Armenia had a well-established legal framework for public procurement, which was supported by the electronic procurement platform (ARMEPS) with open eligibility and broad coverage of all key procurement stages. The public procurement system aligned with international best practices and offered a range of procurement methods depending on the estimated value, complexity, and nature of the procurement. While many contracting authorities were connected to the ARMEPS, the electronic procedures were still not mandatory for all contracting entities. The share of single-source (direct) contracts in the total procurement value of all public sector contracts was 25 % which is unreasonably high. Other challenges included the need to enhance the effectiveness of oversight mechanisms, address different forms of conflict of interest in practice and legislation, and further streamline procurement processes.

Steps to increase independence, integrity and accountability of the judiciary in line with international standards taken so far are commendable, but further reforms are needed. The Supreme Judicial Council and three other judicial institutions operated as judicial governance bodies in charge of the judicial career, evaluation, training, and discipline. Their composition mostly complied with the assessment framework, except for the training commission and ethics and disciplinary commission, in which the civil society representation should be increased. Armenia should also consider measures to avoid the politization of appointments of judges and members of the judicial governance bodies, for example, by prohibiting former officials holding a political office to be selected in these positions. In 2022, judges were selected and promoted through competitive procedures, but the merit-based evaluation selection and promotion system should be strengthened. Some grounds for the disciplinary liability of judges were formulated vaguely and used in practice. The right of judicial appeal against disciplinary decisions of the Supreme Judicial Council did not exist in 2022, thereby affecting judges' rights to fair trial in disciplinary proceedings.

The selection of the Prosecutor General was not merit-based and competitive; political interests influenced the process. Some of the grounds for the pre-term dismissal of the Prosecutor General were vague and allowed unfettered discretion. Armenia had no prosecutorial governance bodies to insulate the prosecution service from political influence. Closed competitions for positions in the prosecution service and the promotion system were not transparent and based on merits, leaving broad discretion to the Prosecutor General. In practice, the integrity checks impacted prosecutorial appointments, which is commendable, although this practice needs to be institutionalized into formal selection criteria. The positive experience of selecting prosecutors for the specialized department on civil confiscation with the engagement of an international expert should be used to improve the recruitment procedures for other prosecutors. Disciplinary proceedings against prosecutors could be streamlined, particularly by establishing narrow grounds for liability.

The anti-corruption investigative jurisdiction and institutional set-up have been significantly strengthened in Armenia during the past two years. The Anti-Corruption Committee started operating in 2021, supported by the new dedicated department in the Prosecutor's General Office. The head of the Anti-Corruption Committee was selected through an open process. Although a Department for Confiscation of Property of Illicit Origin was set up in 2020 within the Prosecutor General’s Office, with competence in the recovery of assets in civil proceedings, which is a positive development, no dedicated agency, unit, or staff in the institutional arrangement was mandated to identify and trace criminal proceeds and manage seized and

confiscated assets in criminal corruption cases. Institutional reform was ongoing, and the new anti-corruption institutions must focus on improving their capacity and transparency.

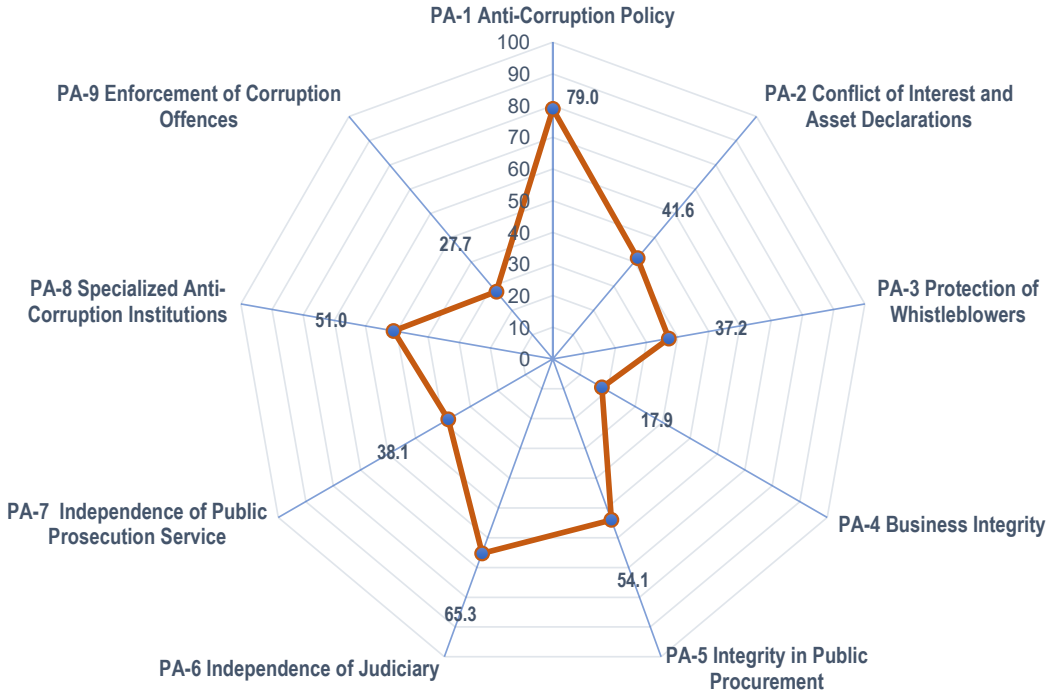
The liability for corruption offences was enforced, but the number of convictions was low in 2022. There was only one case of conviction of a high-level official and no cases of confiscating corruption proceeds. Besides, there were no convictions for money laundering, with corruption as a predicate offence or for standalone money laundering. The annual report of the Prosecutor General on the prosecution of corruption crimes was a good practice example of collating and publishing criminal statistics. Civil confiscation of property of illicit origin was a new promising instrument that has been actively enforced, with the first confiscation orders expected in 2023. Another significant step was the introduction of criminal liability of legal persons by the new Criminal Code adopted in 2022. However, the entry into force of the provisions on criminal liability of legal persons was outside the evaluation period.

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

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

Performance Area	Performance Level	Score
PA-1 Anti-Corruption Policy	A	79
PA-2 Conflict of Interests and Asset Disclosure	C	42
PA-3 Protection of Whistleblowers	C	37
PA-4 Business Integrity	D	18
PA-5 Integrity in Public Procurement	B	54
PA-6 Independence of Judiciary	B	66
PA-7 Independence of Public Prosecution Service	C	38
PA-8 Specialised Anti-Corruption Institutions	B	51
PA-9 Enforcement of Corruption Offences	C	28

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



1 Anti-corruption policy

Significant changes in the political landscape in 2018 created momentum for new anti-corruption commitments reflected in the Anti-Corruption Strategy of Armenia and its 2019-2022 Action Plan. The ambitious policy documents focused on strengthening an institutional set-up of the anti-corruption system and enhancing the legal framework. A high level of inclusion and participation of non-governmental stakeholders in policy development contributed to the quality of strategic documents and created a sense of ownership over the commitments. The authorities should use a risk-based approach in the next policy cycle and build a clear link between expected outcomes, set measures, and indicators at the very outset to ensure consistent performance and deliver the desired impact. In 2022, authorities used a sound monitoring and evaluation methodology. A low level of implementation of policy documents remained a challenge. The Anti-Corruption Department of the Ministry of Justice improved the functions for coordination and monitoring of the anti-corruption policy implementation. To achieve further progress, Armenia needs to address existing deficiencies, including insufficient staff in the dedicated Department, and secure its high-level political support.

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

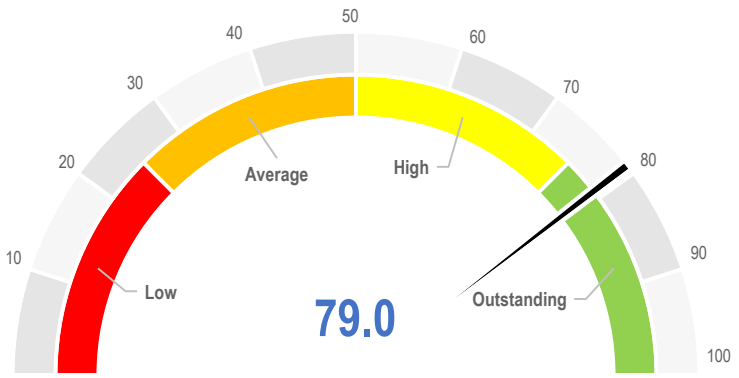
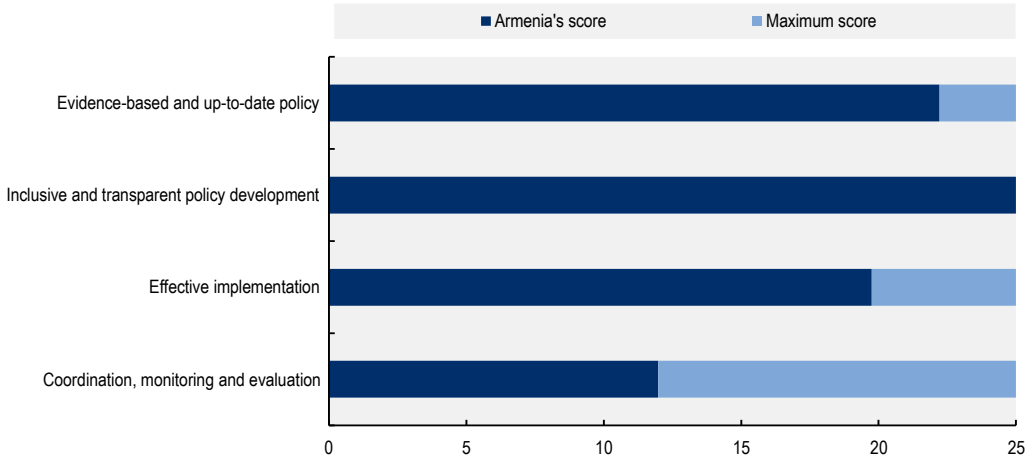


Figure 1.2. Performance level for Anti-Corruption Policy by indicators



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

Background

The fourth Anti-Corruption Strategy of Armenia and its 2019-2022 Action Plan were adopted in 2019. The Department of Anti-Corruption Policy Development and Monitoring of the Ministry of Justice, functioning as a Secretariat, amended the Strategy and Action Plan in August 2022. Government Decision N1332 on the Approval of the Anti-Corruption Strategy of the Republic of Armenia and its Implementation Plan for 2019-2022 reflected the changes to policy documents. Both documents expired on 31 December 2022, and the development of new policy documents for 2023-2026 was ongoing during the monitoring.

Assessment of compliance

Armenia's Strategy and Action Plan went through an extensive design process. The policy documents, structured around five strategic directions, are supported by various sources, including assessments by international organizations and survey results. However, the policy documents lacked a risk-based perspective and did not consider the reports of the anti-corruption agencies. More efforts to build a clear link between defined measures, outcomes, and indicators shall be ensured. While the government updated the policy documents once, the update took place four months before the end of the policy cycle.

Benchmark 1.1.1.

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

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

The Anti-Corruption Strategy (Strategy) and its 2019-2022 Implementation Plan (Action Plan) were supported by A range of data sources and included multiple measures grouped across five strategic directions.

An analysis of the implementation of the previous policy document is provided in Chapter 1.1. of the Strategy (''Assessment of the Anti-Corruption Strategy of the Republic of Armenia and the 2015-2018 Action Plan for the Implementation thereof'') that reflected a very brief stocktake of achievements and lists a few shortcomings of the previous Anti-Corruption Strategy (2015-2018). The weak points included a lack of a solid framework of indicators, inadequate policy implementation, insufficient monitoring and coordination mechanisms, and an excessive emphasis on legislation rather than practice. While this analysis is sufficient for compliance with **element A**, the monitoring team considers that the assessment of the implementation shall be more comprehensive and holistic to distil lessons and provide recommendations for subsequent strategies.

Regarding **element B**, the Action Plan included a commitment to create a corruption risk assessment methodology to point out vulnerabilities and provide input in the next anti-corruption policy design phase. However, the government did not conduct a risk assessment on the national level or in selected areas to identify corruption risks or their factors that should be addressed through the anti-corruption policy.

The policy documents and supporting materials did not refer to specific reports of state institutions (e.g., supreme audit institution, law enforcement bodies, etc.) as required by **element C**. According to the Anti-Corruption Department of the Ministry of Justice, it received information from other state institutions, but the monitoring team believes that it was a sporadic exchange of information rather than a collection and review of relevant reports.

The government incorporated outstanding international commitments and recommendations, such as OGP, OECD/ACN, and GRECO, in the policy documents. While this is sufficient for compliance with **element D**, as confirmed by civil society, the Strategy did not explicitly refer to reports or studies developed by non-governmental organisations, which is a deficiency. The Strategy and Action Plan also successfully utilised data from various international indices (**element E**), such as the Corruption Perception Index and Global Corruption Barometer by Transparency International, and surveys conducted by public authorities and a few non-governmental organizations. As for the use of statistics (**element F**), some of the objectives and baseline indicators of the policy documents were formulated based on the administrative data produced by governmental agencies (number of whistle-blowing cases, number of criminal proceedings, etc.). A few NGOs noted that the volume of the used administrative data in the policy documents should be increased, and more efforts to ensure its systematic collection throughout the Strategy and Action Plan implementation period needs to be made.

Overall, the Strategy and Action Plan went through an extensive design process and relied on a variety of information sources listed in the benchmark. However, the amendments made to the policy documents in 2022 (see below, benchmark 1.1.2.) demonstrate that a more thorough understanding of systematic weaknesses and corruption risks shall be ensured. Thus, as the new anti-corruption policy documents are in the development stage, the monitoring team recommends integrating a risk-based approach to understanding corruption drivers better. Besides, the monitoring team agrees with the opinion of non-governmental stakeholders that a more comprehensive and meaningful analysis of a broader range of administrative data and reports produced by anticorruption agencies shall be ensured.

Benchmark 1.1.2.

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

Amendments to the Strategy and Action Plan entered into force in August 2022, just four months before the end of the policy cycle. The amendments expanded the scope of monitoring and introduced new forms for semi-annual and annual reporting, as well as a new measurement scale for assessing progress. Besides, a number of substantial changes to the Action Plan were made. The latter included reformulating some objectives and measures, adding new outcome indicators, and revising targets and timelines.

While the update took place within the timeframe required by the benchmark and the introduced changes were based on findings of the previous monitoring reports, the monitoring team recommends ensuring that a revision takes place timely, allowing to promptly identify and take account of noncompliance before the end of the policy cycle. Additionally, the government should ensure a more inclusive process of the development of policy updates, especially regarding the engagement of non-governmental stakeholders (see the Opinion of the Non-governmental stakeholders under Performance Area 1).

Benchmark 1.1.3.

Policy documents include:

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

The Strategy and Action Plan were in line with all elements of the benchmark. The Strategy had a clear structure - nine broadly formulated objectives (**element A**) aligned with the overall goals across five strategic directions – institutional development, prevention, investigation of corruption-related cases, public awareness and education, and monitoring. It included a description of each objective, a reference to responsible agencies, and an overview of policy measures. In the Action Plan, the objectives were broken down into outputs, annual targets and their indicators, an implementation timeline, and a responsible agency.

Two types of indicators were also developed. Outcome indicators (**element B**) were included in the Action Plan as 'Indicators of the result-oriented monitoring'' with a baseline value and specific targets. The section ''Indicators of the result-oriented monitoring'' in the Action Plan and the Strategy included a few impact indicators (**element C**). Namely, two impact indicators aimed to assess a change in the level of perception of corruption in local self-governance bodies and increase citizens' awareness about anti-corruption programmes. In other cases, the government used proxy indicators – international indices such as the Corruption Perception Index (TI), Corruption Control Index (WB), and Global Competitiveness Index (WEF). For technical compliance with **element C**, the limited number of mentioned impact indicators is sufficient. However, the monitoring team notes that the government shall identify a broader range of medium and long-term impact indicators assessing the causal effect of the objectives in the next policy circle.

Appendix 3 of the Government Decision "On Approving the Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022" provided the estimate for each output and objective and the total budget of the policy documents (**element D**). Besides, the Action Plan indicated the funding source for each measure (**element E**).

Overall, while the strategic documents had all the required elements, the authorities noted that the Anti-Corruption Department identified the issue of the insufficient number of impact indicators and that some outcome indicators were incomplete or incompatible with the objectives. These shortcomings led to the revision of the policy documents in 2022. In the next policy cycle, the monitoring team recommends authorities ensure a logical framework where a clear link between defined objectives, measures, and indicators, including meaningful impact indicators, is built from the outset.

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

Background

The anti-corruption policy documents went through a consultation process in 2019. The dedicated portal (a unified website for ***publishing*** draft legal acts www.e-draft.am) lists comments submitted during two rounds of consultations.

Assessment of compliance

The policy documents went through an inclusive and extensive public consultation process, with the active participation of civil society. The non-governmental stakeholders also praised the high level of transparency and cooperation in drafting. The mandatory use of a dedicated public consultation platform and publication of written responses to more than 170 submitted comments represents a good example of participatory public consultations.

Benchmark 1.2.1.

The following is published online:

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

Both draft policy documents and adopted versions (**elements A and B**) were published and available at the time of monitoring. The first draft of the Strategy and Action Plan was published on a unified website for publication of legal acts' drafts (www.e-draft.am) in December 2018.[2] The second round of consultations started in June 2019, when the substantially revised drafts were published again.[3] The platform was easily accessible to all interested parties. The non-governmental organizations believed the anti-corruption policy development process was highly inclusive and participatory. The monitoring team commends the high uptake of suggestions provided by the non-governmental organizations.

In October 2019, the Government adopted the Anti-Corruption Strategy and three other Annexes – an Action Plan, a Financial Assessment of the Action Plan, and Monitoring and Evaluation Forms. The policy documents were published on the Legal Information System Portal - https://www.arlis.am.[4] The adoption was disseminated through social and mass media outlets.

[2] https://www.e-draft.am/en/projects/1439.

[3] https://www.e-draft.am/projects/1733.

[4] https://www.arlis.am/DocumentView.aspx?DocID=168051.

Benchmark 1.2.2.

Public consultations are held on draft policy documents:

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

The Strategy and Action Plan went through an extensive consultative process conducted in a highly participatory manner and in close cooperation with non-governmental stakeholders and, thus, compliant with all three elements of the benchmark. The mandatory use of the unified platform to publish draft legal acts offered transparency to the drafting process and extended consultations to a broader group of stakeholders. The first draft of the Strategy and Action Plan went through public consultations from 19 December 2018 to 31 January 2019 (**element A**).[5] After submitting an extensive list of comments, the drafts were substantially revised, and the second revised versions were published on the same platform from 10 June 2019 until 20 July 2019. The non-governmental stakeholders highly praised the efforts to reflect most of the suggestions the civil society representatives provided to the first draft.

Before the adoption, the platform www.e-draft.am listed all comments submitted during two rounds of consultation (more than 170 comments in total) and summarized responses provided by the authorities to each comment (**elements B and C**). The government also held an extended public consultation, which included ten public discussions and two discussions within the Anti-Corruption Policy Council and with international partners. As required by **element C**, the list of government responses included an overview of changes made as a result of each comment and reasons for not accepting or partially accepting submitted comments.

The monitoring team believes that the close cooperation with non-governmental stakeholders, the use of a dedicated public consultation platform, and a high level of openness that contributed to the quality of final policy documents and increased awareness of stakeholders is commendable.

Indicator 1.3. The anti-corruption policy is effectively implemented

Background

The monitoring of the annual implementation of policy documents was conducted by the Anti-Corruption Department of the Ministry of Justice. The dedicated department enhanced the monitoring and evaluation system and introduced a new measurement scale and templates in 2022. The implementation rate for 2022 was reflected in the Monitoring and Evaluation Report finalized in 2023.

Assessment of compliance

As evidenced by the latest Monitoring and Evaluation Report 2022, a low level of implementation of policy documents (58%) was a challenge.

[5] Project for activities for the anti-corruption strategy and its implementation of 2019-2022 - e-draft.am.

Benchmark 1.3.1.

	Compliance
Measures planned for the previous year were fully implemented according to the government reports	58%

The Monitoring and Evaluation Report for 2022[6] demonstrates that only 58% of measures (25 out of 43 measures) foreseen in the Anti-Corruption Strategy and Action Plan were fully implemented. 19% (8 measures) were mostly implemented, 16% (7 measures) were partly implemented, and 7% (3 measures) were not implemented.

According to the Monitoring and Evaluation Report for 2022, the overall performance of the strategic documents was 80.2%. The performance was calculated via a ''weighted average method of variation series''[7] by assessing each objective through the following scale: (1) implemented completely (91-100% of activities implemented within measure); (2) mostly implemented (61-90%); (3) implemented partially (31-60%); (4) not implemented (<30%). The monitoring team is concerned that while the applied scoring method resulted in an overall 80.2% implementation rate, only 25 measures (out of 43) were implemented fully in practice. Considering these results, the monitoring team encourages authorities to ensure that the lack of implementation (18 measures not implemented fully) is communicated in a timely manner and the necessary steps to address the gaps and thoroughly analyse the achieved results per each objective are taken before the end of the policy circle.

The Monitoring and Evaluation report explained incomplete implementation due to various factors, delays in adopting legal drafts by the National Assembly, insufficient time for implementation, and a lack of human resources in the Commission for Prevention of Corruption.

Benchmark 1.3.2.

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

The Monitoring and Evaluation Report for 2022 explicitly references the lack of funds as a barrier only in relation to the development of mechanisms for oversight over compliance with integrity rules of persons to be appointed to state positions (measure 9) and insufficient human resources for the establishment of the Anti-Corruption Committee (measures 2). Thus, only two measures out of 43 were not implemented due to the lack of funds, which is less than 10% required by the benchmark.

[6] https://moj.am/storage/files/pages/pg_7967694028641_AC_M-A_Report_final_2023-compressed_1_.pdf.

[7] The Anti-Corruption Strategy of Armenia, para. 133-134.

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

Background

The Department of Anti-Corruption Policy Development and Monitoring (Anti-Corruption Department) within the Ministry of Justice, performing functions of the Secretariat of the Anti-Corruption Policy Council, is charged with driving policy development, monitoring, and evaluating the Anti-Corruption Strategy and Action Plan. The annual monitoring reports developed on an annual basis provided an overview of implementation progress against yearly targets, described civil society participation, and reported on challenges.

Assessment of compliance

The increase in the quality of coordination, monitoring, and evaluation mechanisms by the Anti-Corruption Department is commendable. However, considerations to increase available human resources and the authority of the dedicated department to influence the implementation shall be made. While the high-level political body (Anti-Corruption Council) chaired by the Prime Minister and operational Working Group was in place, there was an evident lack of regular activity in 2022. Non-governmental stakeholders were engaged in the coordination, and their input was reflected in monitoring reports for 2021 and 2022.

Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

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

The Anti-Corruption Department of the Ministry of Justice is entrusted with the policy development, coordination, evaluation, and monitoring functions based on the Prime-Minister Decision No. 1332-N (**element A**). The Department included two Divisions - Anti-Corruption Policy Development Division and Monitoring Division. The Monitoring Division, as the Secretariat of the Anti-Corruption Council, is solely responsible for the coordination, implementation, monitoring, and evaluation. In 2022, it had three dedicated staff members. Thus, the country is compliant with **element A**.

In terms of the functions of the Monitoring Division (**element B**), it exclusively focused on coordinating the implementation of anti-corruption policy documents, methodological support of focal points, drafting monitoring and evaluation reports, providing methodological support to responsible focal points, reporting on international anti-corruption commitments, and supporting the Anti-Corruption Policy Council. The powers of the Division were established by the Charter of the Department, where the only power mentioned was a power to require the submission of monitoring reports and, therefore, not compliant with this element.

However, the changes introduced to the Law on Public Service (Article 46.3) in December 2022 clearly established the functions and powers of the Anti-Corruption Department (performing the functions of the Secretariat of the Anti-Corruption Policy Council). Among them, methodological assistance, advice to agencies responsible for the implementation of the anti-corruption programs under the Anti-Corruption Strategy and other programs, as well as coordination of the implementation of other sectoral international obligations. The amendments stated that the coordinating body is entitled to request and receive information and documents from persons in charge of anti-corruption program implementation and submit proposals on implementing international commitments. The amendments entered into force on 2 January 2023 and, thus, fall outside the monitoring period.

As regards the staff of the Anti-Corruption Department (**element C**), in 2022, its Monitoring Division had only three officials, including the Head of the Division. In comparison, in 2020, in addition to three staff members, it also had three experts and one vacant position.[8] Considering the scope of monitoring and evaluation reporting (two reports per year based on a new measurement system) as well as an extensive number of implementing agencies (more than 77 state bodies and 54 local governance bodies), the available resources appeared to be limited. The human resource deficit in the dedicated department was directly mentioned as an obstacle to implementing a few activities of the Action Plan in the Monitoring and Evaluation Report. As noted during the onsite visit, the Department intends to request an increase in the budget to cover 18 additional positions. Therefore, the monitoring team is of the view that the country is not compliant with **element C**.

The authorities provided information about consultations provided (**element D**) to responsible agencies on drafting monitoring reports and two training sessions conducted with the support of international partners to increase awareness of focal points on their tasks and coordination process. The Anti-Corruption Department was successful in providing strong support to the implementing agencies.

A high-level coordination body is the Anti-Corruption Council. Its goal is to review anti-corruption strategies and related legal acts, sector-specific anti-corruption programs, implementation of the anti-corruption strategy, and monitoring results. Its composition included the Prime-Minister (chair), Minister and Deputy Minister of Justice, Chairperson of the Supreme Judicial Council, Prosecutor General, Chairperson of the Commission for Prevention of Corruption, Human Rights Defender, Head of the State Supervision Service, representatives from the Parliament and non-governmental stakeholders. The Council shall convene meetings not less than four times a year, although, in 2022, only one meeting took place. As reported by authorities, the Anti-corruption Task Force responsible for coordinating anti-corruption performance on the operational level was established in 2021. In total, it convened ten meetings, although no meetings were organized after 24 June 2022.

Overall, the monitoring team welcomes improvements in the quality of coordination, its frequency of communication between the stakeholders, and the overall work of the Anti-Corruption Department. However, given the extensive number of stakeholders and frequency of the monitoring, considerations to increase human resources within the dedicated department shall be made. In the monitoring team's opinion, the Department lacked the political weight to influence the implementation, ensure the active participation of independent government organizations, and enhance the accountability of engaged public agencies. This opinion is shared by the non-governmental stakeholders who consider that frequent leadership and staff turnover changes in the Ministry of Justice significantly affected the work of the Department. NGOs believed that the dedicated unit lacked support and political backing due to its position within the structure of the Ministry. A few stakeholders suggested that moving these functions back to the Prime Minister's Office may increase ownership over the commitments, especially among independent public agencies.

[8] See, 5th Round of Monitoring, Pilot Report of Armenia.

The monitoring team also recommends considering ways to secure high-level political support of the Anti-Corruption Department. The Government should also engage the National Assembly more proactively in the anti-corruption policy coordination to ensure political ownership of the reforms and a higher level of implementation.

Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

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

Monitoring of the Action Plan implementation was conducted semi-annually and annually and, thus, complied with **element A**. Particularly, according to the Strategy, annual monitoring reflected progress and obstacles in the implementation of defined measures and achievement of ''results-based indicators'' per each measure. The implementing agencies were obliged to submit annual self-assessment reports within ten working days after the end of each year. The Anti-Corruption Department reviewed, analysed, and summarised provided information, conducted its assessment, and prepared an annual monitoring and assessment report. Before the report was published, opinions of the non-governmental sector were requested and included in the report. The latest Monitoring and Evaluation Report was finalized in 2023. In 2022, two semi-annual monitoring reports and the annual Monitoring and Evaluation Report for 2021 were also prepared.

The extensive Monitoring and Evaluation Report 2022 followed the structure of the strategic documents (see benchmark 1.2.2). The key data sources were self-assessment reports by implementing agencies, international assessments, and information provided by non-governmental stakeholders. The report analysed the implementation of measures and illustrated progress in achieving annual targets. Information on the performance against outcome indicators was provided as requested by **element B**, although the monitoring team notes that it is not often clear to which measure or outcome indicators the narrative report referred. In the final part of the monitoring report, the Anti-Corruption Department summarized the implementation level, briefly noted shortcomings, and made general conclusions and recommendations.

As concerns **element C**, information about expenses for anti-corruption activities implemented by state bodies was available only in the annual state budget reports per individual agencies. The monitoring and evaluation reports did not include information about the budget spent. The monitoring team believes that the lack of information on the funds spent against the implementation level makes it difficult to identify whether the envisaged budget and implementation were accurate, sufficient, or properly utilized.

The Monitoring and Evaluation Report 2022 was published in 2023 (**element D**).[9] The annual Monitoring and Evaluation Report for 2021 and two semi-annual monitoring reports were also available online.[10]

The monitoring team welcomes the introduction of the new monitoring and evaluation mechanism and improving outcome indicators. The produced monitoring reports are overall of good quality and provide implementation details across activities. However, the authorities may also consider further streamlining with reports to illustrate the implementation progress against results (outcome indicators). Besides, considering the low implementation rate (see above benchmark 1.3.1), the monitoring team recommends ensuring that implementation challenges are meaningfully analyzed. Non-governmental stakeholders are of a similar opinion, noting that implementation challenges are not sufficiently explored, and insights into institutional capacities and approaches to implement planned measures shall be reflected better.

Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

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

As noted in the Guide complementing the Assessment Framework, the monitoring should assess if the evaluation of the previous policy document has been carried out, and the previous policy document means the policy document for the policy cycle preceding the policy documents in force in the assessment period. For Armenia, the previous policy documents were for 2015-2018. The new Strategy for 2019-2022 included an overview of some gaps in the previous policy documents, and an annual monitoring report for the last year (2018) was elaborated. However, there was no stand-alone evaluation report for the policy documents for 2015-2018; therefore, the country is not compliant with all three elements of the benchmark. At the time of the monitoring visit in April 2023, the Anti-Corruption Department was developing a final evaluation report assessing results and impact achieved by the Strategy and its Action Plan for 2019-2022; this report will be considered in the next assessment of Armenia under the Istanbul Anti-Corruption Action Plan.

[9] ՀԱԿԱԿՈՌՈՒՊՑԻՈՆ ՌԱԶՄԱՎԱՐՈՒԹՅԱՆ եվ դրա իրականացման 2019-2022 ԹՎԱԿԱՆՆԵՐԻ միջոցառումների ԵԶՐԱՓԱԿԻՉ ԳՆԱՀԱՏՄԱՆ ԵՎ ՄՈՆԻԹՈՐԻՆԳԻ ՁԵԿՈՒՅՑ (moj.am).

[10] Anti-Corruption Monitoring and Evaluation 2021 Report - AF Constitution - Library (moj.am) and The Government of Armenia, October 2019, 3, "The Anti-Corruption Strategy of the Republic of Armenia and its implementation 2019-2022 Establishment of the Programme of Activities" by Decision N 1332 on implementation of subordinate activities in 2021 - AF Constitution - Library (moj.am)

Benchmark 1.4.4.

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

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

Non-governmental stakeholders were represented in the operational level Working Group and the Anti-Corruption Policy Council. The Council included seven representatives from non-governmental organizations, including two representing the business sector, all selected through open competition on a rotation basis. The methodology of the Anti-Corruption Strategy encouraged civil society to carry out monitoring and assessment and submit results to the Ministry of Justice annually. Following the revision of policy documents in 2022, the timeframe for submission of civil society's input to the monitoring report on the progress of implementation was increased from two days to one month. A separate chapter, "Prevention of Corruption and Civil Society Organisations," of the Monitoring and Evaluation Report for 2022 reviewed studies and recommendations from documents developed by civil society.[11] Besides, as reported by the non-governmental stakeholders, the government has been actively supporting the preparation of the Alternative Public Monitoring of the Actions of the 4th Anti-Corruption Strategy.[12] Thus, the country is compliant with both elements A and B. An evaluation report for the 2015-2018 Strategy and Action Plan was not developed (see benchmark 1.4.3); the non-governmental stakeholders could not contribute, and thus, the country is not compliant with **element C**.

The selection of non-governmental organisations in the composition of the Anti-Corruption Policy Council via the open procedure is commendable. The view of the monitoring team on the high level of engagement of civil society in the policy coordination process and monitoring is supported by the stakeholders.

[11] Transparency International Anticorruption Centre's study on "Integrity Institutional System in Public Administration of Armenia," Armenian Lawyers' Association report on alternative monitoring of the annual implementation of the Anti-Corruption Strategy and its Action Plan 2019-2022, and other reports.

[12] For more information see https://armla.am/en/7665.html.

Box 1.1. Good practice – Institutionalisation of focal points' functions

Through the legislative amendments introduced in the Law on Public Service in December 2022, the Government introduced an institute of officials responsible for anti-corruption activities (focal points). Its key purpose is establishing a clear mandate and setting out focal points' responsibilities to ensure effective intra-agency coordination. According to the Law (Article 46.1), a state or local self-government body shall appoint at least one person to coordinate and implement anti-corruption measures. Article 46.2 further specifies the functions of focal points: to support the fulfilment of anti-corruption measures envisaged by strategic documents, provide information and reports, conduct self-evaluation, participate in anti-corruption forums, request and receive information from relevant structural units, request and receive methodological support from coordinating body. The amendments entered into force on 2 January 2023. Thus, the practical implementation is still to be seen; however, this change has a high potential to improve coordination, enhance accountability on an institutional level and contribute to better implementation of anti-corruption strategic documents.

Assessment of non-governmental stakeholders

The interviewed non-governmental organizations (NGOs) believed that the anti-corruption policy development process, stimulated by the increased political support after the Velvet Revolution, was highly inclusive and participatory. The availability of information and uptake of suggestions to the drafts from non-governmental organizations was also positively assessed. NGOs thought that the policy documents reflected a new centralized approach towards anti-corruption institutions, whereas its goals and objectives were set properly. In terms of evidence used, it was noted that the government demonstrated a genuine commitment to considering recommendations of international organizations and worked to improve its representation in international indices. However, the NGOs expressed concerns regarding a lack of systematic evidence collection, including surveys, focus groups, and case studies, to enrich the policy decisions. A few NGOs noted that there was less openness towards incorporating reports presented by local non-governmental actors at the policy design stage. Concerns were also raised in relation to the volume of the used administrative data in the policy documents and insufficient impact indicators.

The NGOs were critical of the amendments to the policy documents made four months before the end of the policy cycle in August 2022. They considered the revision process not to be inclusive, and while the intention to improve indicators was positive, not all changes were clearly explained to the stakeholders.

According to NGOs, the implementation level for anti-corruption policy measures in 2022 was mixed: ''effective in some measures and not in others''. NGOs spoke favourably of the introduction of the new monitoring and evaluation mechanism and improvement of outcome indicators. However, they believed that monitoring reports did not thoroughly analyse the implementation challenges and did not offer in-depth insights into institutional capacities and approaches to implement planned measures. Stakeholders suggested that more efforts are needed to draw lessons from the lack of implementation and better understand real achievements and effectiveness of the measures throughout the monitoring process. Besides, authorities were advised to increase transparency and availability of data on the implementation among responsible institutions.

NGOs pointed to an evident increase in the quality of coordination, frequency of communication between the stakeholders, and the work of the Anti-Corruption Department. Concerns were expressed regarding the lack of activities in the Anti-Corruption Policy Council and the Anti-Corruption Working Group in 2022. Stakeholders highlighted frequent leadership and staff turnover changes in the Ministry of Justice during the last few years. They noted that these changes significantly affected the work of the dedicated

department. NGOs believed that it lacked support and political backing to push the implementation forward. It was suggested to move the respective functions back to the Prime Minister's Office, thereby increasing ownership over the commitments, especially among independent public agencies.

2 Conflict of interest and asset declarations

In 2022, Armenia introduced significant changes in the legal framework on the management of conflict of interest (COI) to align it with international standards. The enactment of the amendments was outside the assessment period and did not impact compliance. Despite the amendments, there was still no harmonized framework of consistent COI rules for different categories of public officials. Certain provisions lacked legal certainty. The enforcement of COI rules remained a challenge, with little tangible progress achieved in 2022. Insufficient capacities of relevant institutions in the decentralized system impeded the consistent enforcement of integrity rules. Armenia had an advanced legal framework for asset declarations with a wide coverage of public officials and a broad content of disclosure. Members of management or supervisory bodies of SOEs were not covered though. The online declaration system was accessible to the public, and the scope of restricted data was limited. An automated cross-check and risk-based analysis mechanism was being developed. Verification of asset and interest declarations and routine application of administrative sanctions was ensured in practice. Significant progress in setting up the Corruption Prevention Commission was commendable, although the agency significantly lacked human and operational resources.

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

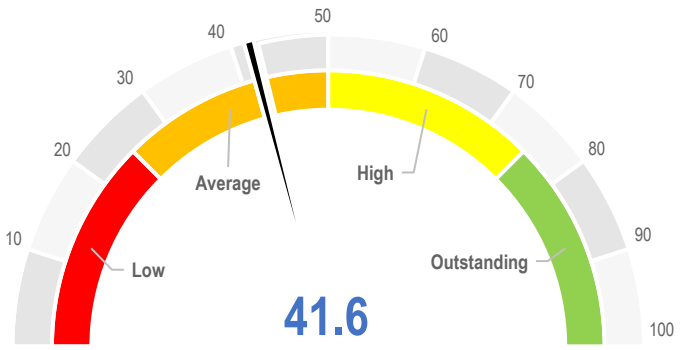
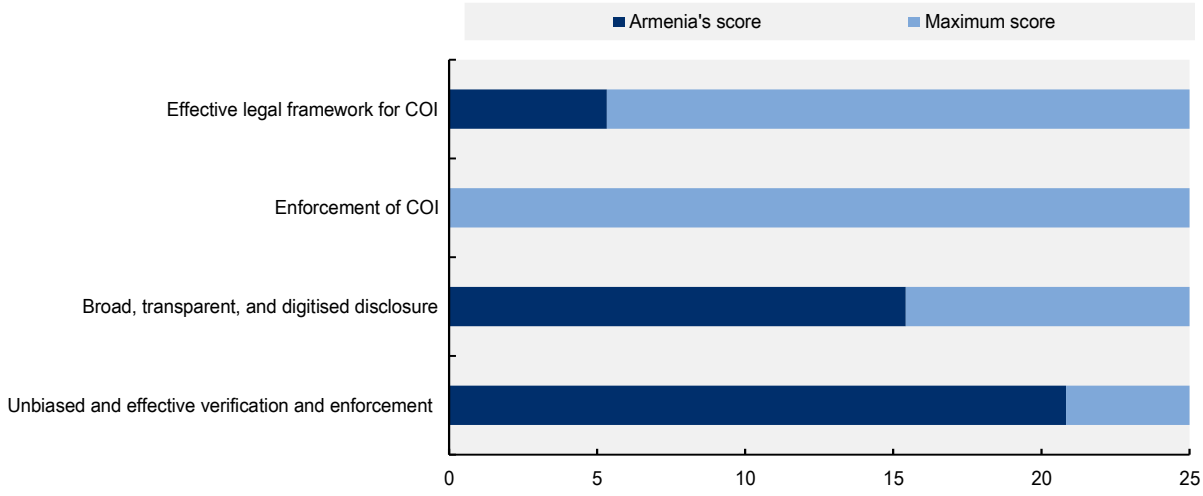


Figure 2.2. Performance level for Conflict of Interest and Asset Declaration by indicators



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

Background

The Law on Public Service of Armenia (LPS) establishes the overall framework for preventing, reporting, and resolving conflict of interest (COI) in public service. The COI definition and responsibilities for preventing and managing conflict of interests are provided in Article 33 of the LPS. These responsibilities are assigned to a public official, to his/her supervisor, and a dedicated agency - Corruption Prevention Commission. The special COI provisions targeting officials without superiors, as well as judges, prosecutors, and members of the parliament, were in place.

Assessment of compliance

In the reporting period, Article 33 of the LPS defined the COI in a narrow way, and no apparent or potential COI was covered. The legislation explicitly obliged an official to report ad hoc COI through a written statement and abstain from decision-making until the COI was resolved, although the provisions did not foresee a duty of a manager to resolve COI when detected from sources other than self-reporting by a public official. The listed methods for resolving emerged COI were insufficient to assist in effectively managing conflict situations. A revision of the national legislation in 2022, including the LPS, significantly improved provisions for preventing and managing conflict of interest. The amendments included an expanded concept of conflict of interest and the scope of affiliated persons as well as a new definition of ''private interests''. A range of clearly defined conflict-of-interest (COI) resolution methods was introduced. The amendments were adopted in December 2022 and entered into force on 2 January 2023 and, therefore, technically fall outside the assessment period.

Benchmark 2.1.1.

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

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

In the assessment period, a COI definition was narrowly formulated in the LPS and did not include an apparent and a potential conflict of interest. Particularly, according to Article 33 (paragraph 1) ''a conflict of interest is a situation where a person holding a position, while exercising his or her powers, performs an action or adopts a decision that can reasonably be interpreted as conduct motivated by his or her personal interests or personal interests of a person affiliated with him or her". The second paragraph of the Article interpreted ''a conduct motivated by his or her personal interests or personal interests of a person affiliated with him or her" as ''performance of an action or adoption of a decision which leads or contributes to or may reasonably lead or contribute to'' the circumstances defined by the law (listed in Article 33, paragraph 2(1-4)), The monitoring team believes that the Article 33 implies the existence of an actual actions/decision which then can lead to COI; therefore potential COI was not provided by the legislation. A similar assessment was provided in the Pilot Monitoring Report of Armenia, which was supported by the reference to the government's position on the narrow definition of the COI.[13] Thus, the country is not compliant with **element A**.

The authorities expanded the legislation on preventing and managing COI in 2022. According to the amended Article 33 of the LPS, COI is now defined as a situation where the private interests of a person holding a position influence or may influence the unbiased and objective performance of official duties. The amendments seem to encompass actual and potential COI. However, the monitoring team did not assess the amended provisions as they entered into force after the assessment period on 2 January 2023.

[13] OECD/ACN (2022), Pilot 5th Round of Monitoring Report on Armenia, 2022, pages 34-35, www.oecd.org/corruption/anti-bribery/corruption/acn/anti-corruption-reforms-in-armenia-e56cafa9-en.htm.

As concerns **element B**, in 2022, the definition of ‘’private interests’’ was limited to an improvement of property or legal status of an official or a person affiliated with him/her, as well as an improvement of property or legal status for a non-commercial entity where an official or his/her affiliated person are members or similar benefit for a commercial organization where an official or his/her affiliated person are ‘’participators’’. The definition also covered the appointment of an affiliated person to a position. Following the amendments, its scope was expanded to incorporate ‘’any privilege’’ to an official or an affiliated person as well as persons or organizations with which an official or affiliated persons have business, political, and other practical or private relations (Article 33, part 2). The new provision further unfolds the terms ‘’business relations’’ and ‘political relations’’. The former includes any economic, business, or transitional relations, whereas the latter covers relations arising out of membership in a party or other business or personal connections with members of that party.

Similarly, in 2022, the LPS defined “affiliated persons” only as a spouse, children, parents and grandparents, uncles, aunts, and their children, sisters and brothers, and their spouses and children. After the amendments, Article 33 encompasses all persons tied with kinship and non-kin close personal relations with a public official, including persons living together and organizations where direct or indirect control of a public official or his/her affiliated persons exists. As noted, amendments entered into force on 2 January 2023 and cannot impact compliance with **element B** in this report.

Both before and after the December 2022 amendments, the legislation of Armenia did not cover an apparent COI as required by **element C**. Moreover, in 2022, the LPS had a provision that clearly excluded an apparent COI by stating that ‘’there is no conflict of interest if the personal interest has an apparent influence on the proper exercise of the powers of the person holding the position, which is actually absent’’ (Article 33, paragraph 4). The authorities mentioned that the revised paragraph 6 of Article 33 currently indirectly covers an apparent COI by providing that, on the basis of examination of the official’s written statement, the official's superior/direct supervisor or the CPC may suggest him/her to “continue or resume the unbiased and objective performance of duties in the case of absence of the conflict of interests’’. These legislative amendments cannot be taken into consideration by the present assessment since they entered into force in 2023. Nonetheless, the monitoring team believes that the definition of the COI shall extend to an apparent COI by explicitly mentioning it the COI definition, and thus, at this stage, the country is not compliant with **element C**.

While the monitoring team welcomes the legislative changes that bring the normative framework closer to international standards, including the revised definition of COI and an expanded scope of private interests, the compliance of new provisions with the benchmark cannot be assessed by this report but will be reviewed in the following monitoring report. NGOs also believed that the authorities should continue addressing remaining deficits or inconsistencies in the LPS and legal acts establishing COI norms for different categories of public officials.

The authorities noted that although no guidelines for managing conflict of interest have been developed separately, in 2021, the CPC approved the model rules of conduct of public servants, and in 2022, developed the manual guideline for interpretations of these rules. Furthermore, the conflict of interest rules are also provided in the Code of Conduct of Persons Holding State Positions, which, at the time of monitoring, were in the discussion phase and planned to be approved soon. According to the CPC, adopting the Code will also be followed by developing the guidelines/manual for interpretations of the rules.

Benchmark 2.1.2.

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

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

The duties of an official to report emerged COI (**element A**) and abstain from decision-making until it is resolved (**element B**) are established by the legislation. Namely, Article 33 of the LPS assigns a duty to prevent and manage conflict of interest to a public official, his/her superior or immediate supervisor, or the CPC. It stipulates that an official must submit a written statement on the circumstances related to COI to his/her superior or immediate supervisor in case circumstances can lead to COI during the performance of an action or adoption of a decision. The statement shall be reviewed immediately. The amendments of December 2022 specified a timeframe within which the written statement shall be submitted (10 days), thereby clarifying the disclosure procedure. When a public official does not have a superior or an immediate supervisor, a written statement shall be submitted to the CPC. The law does not define a deadline for reporting COI to the CPC for an official without a superior.

A duty to abstain from action and decision-making (**element B**) is foreseen by part 5 of Article 33 of the LPS. After the amendments in 2022, the scope of this obligation was extended to include preparatory works aimed at decision-making, such as drafting documents, organizing discussions, and forming task forces that influence the decision-making process.

The LPS (Article 33, part 5), in force until 31 December 2022, provided an obligation of the superior or immediate supervisor of the public official who submitted a written statement to take steps or suggest taking steps to resolve the COI situation. An obligation to “suggest taking steps” to resolve the situation was also provided for the CPC in case the person submitting a written statement did not have a superior or immediate supervisor. However, the monitoring team also notes with regret that neither the previous version of the LPS nor its new provisions explicitly indicate a manager's duty to resolve COI in cases when COI was detected from sources other than self-reporting by a public official. Thus, the country is not compliant with **element C**.

As noted by the government, COI situations are also investigated based on media reports in addition to self-reporting. Particularly when a person does not report an incident/situation to a supervisor or the CPC but it becomes known through media coverage.

In addition to the responsibilities of superiors and CPC, Articles 44-46 of the LPS also empower ethics commissions and integrity officers (‘’integrity affairs organizers’’) in state and local self-governance bodies to study and address situations of COI. The ethics commission’s duties are: i) to examine and address applications on violations of incompatibility provisions, other limitations, rules of conduct by public servants, and applications on conflict of interest; ii) issue an opinion or submit recommendations to an authorized body or a public official on prevention and elimination of violations of incompatibility provisions, other limitations, rules of conduct, and prevention and elimination of COI situations. Integrity officers consult public servants on incompatibility provisions, other limitations, COI-related issues, and rules of conduct.

The CPC is the main body responsible for the prevention and management of COI regulations among persons holding state positions (except for members of the Parliament (Deputies), judges, members of the

Supreme Judicial Council, prosecutors, and investigators), heads and deputy heads of communities, heads and deputy heads of administrative districts of the community of Yerevan. The CPC may act based on a written statement but also based on publications in media or in case of detecting prima facie violations or analyzing declarations (Article 27, Law on Corruption Prevention Commission).

Benchmark 2.1.3.

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

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

The methods of resolving ad hoc conflict of interest foreseen by the LPS did not comply with any of the elements (**elements A-H**) listed in the benchmark. In the assessment period, the LPS contained only a general requirement to ''take steps or suggest taking steps to resolve the situation by a supervisor'' and to assign the power to consider and solve the matter concerned to another person holding a position. Divestment of asset-related interests by a public official was covered by LPS Article 31 on incompatibilities, although the benchmark 2.1.3 concerns only ad hoc COI and does not cover incompatibilities and other situations resolved through various restrictions. Thus, the monitoring team concludes that no other resolution methods applicable to different COI situations and listed in the benchmark were explicitly mentioned in Article 33 in the reporting period.

As of 2 January 2023, Article 33 (part 6) lists specific measures to be taken by a supervisor following a written statement by an official. The measures include restricting the access of the official to certain information; assigning the power to consider and solve the matter concerned to another official if it is not prohibited by law; setting a deadline for eliminating COI upon the consent of the official; restricting powers or scope of discretion of the official in the given case; refraining from making a decision in collegial bodies, unless otherwise provided by the law regulating the relevant relation; continuing or resuming official duties in the absence of COI. Although this analysis will not be reflected in the rating for this report, the monitoring team observes that among the benchmark's elements, transferring a public official to duty in a non-conflicting position, performing duties under external supervision, and resignation/dismissal of the public official seem to be missing in the revised legislation. Setting a deadline for eliminating COI may cover elements A-C of the benchmark, although it would need additional clarification.

Benchmark 2.1.4.

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

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

As noted above, in 2022, the LPS applied to all persons holding state positions (except for Deputies, judges, members of the Supreme Judicial Council, prosecutors, and investigators), heads or deputy heads of communities, a head or deputy heads of the administrative district of the community of Yerevan, and public servants. In 2022, the LPS did not provide for any specific methods of resolving COI in the collegiate state bodies: relevant provisions were included in some of the legislative acts regulating specific collegiate bodies (for example, the Supreme Judicial Council or the Corruption Prevention Commission[14]), but not all collegiate (collective) bodies were covered by the specific provisions.

Authorities noted that persons having no superior or immediate supervisor or persons holding a state position submit a written statement to the Corruption Prevention Commission in the case provided for by the LPS (Article 33, part 7). However, the benchmark requires the legislation to either contain general rules applicable to *specific* situations in collective bodies or provide specific rules for each collective body without a direct superior. Following the amendments of 2 January 2023, Article 33 (part 6) introduced a list of COI resolution measures to be taken by a public servant's supervisor/superior, including refraining from making a decision in collegial bodies unless otherwise provided by the special law (see benchmark 2.1.3). This provision, however, only concerns situations when the member of the collegiate body has a supervisor/superior, which is not always the case in collegiate state bodies, which operate independently. In any way, the 2022 amendment to the LPS was outside the assessment period. Therefore, the legislation is not aligned with **element A**.

Article 33 of the LPS refers to a general rule for managing COI among public officials without supervisors or those holding political offices (e.g., President, Prime Minister, government members, heads of autonomous bodies). In this case, these officials shall submit a written statement to the CPC that suggests taking steps to resolve the situation, including making a statement on the presence of COI or its absence. Following the publication of an opinion of the CPC on its official website within three days, an official shall submit a public clarification and publish it on the website of a respective agency within three days. The Code of Administrative Violations foreseen the responsibility for violation of COI regulations. Particularly, Article 169.31 (1) foresees a fine for not submitting a written statement about the circumstances related to COI to the CPC by a person who does not have a superior or direct manager or holds a political position. Part 2 of Article 169.31 also establishes responsibility for taking an action (inaction) or taking a decision in a situation of conflict of interest by a person who does not have a superior or direct manager or holds a political position receiving the recommendation of the Corruption Prevention Commission regarding the circumstances of the conflict of interest. However, the LPS law does not explicitly define any specific methods to resolve COI that the CPC could take within its mandate other than making a statement. At the same time, Article 33 (part 6) of the LPS, in force since 2 January 2023, does not seem to address this issue either since it only refers to the measures available to the superior/supervisor. Thus, the regulations

[14] According to Article 21 of the Law on Corruption Prevention Commission, "…The member of the Commission to whom the discussed question refers does not take part in the voting.''

are not compliant with **element B** either. The monitoring team recommends that authorities ensure that a clear and broad range of appropriate COI resolution measures for both members of the collegiate and officials without supervisors and those holding political offices are provided in the law.

Benchmark 2.1.5.

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

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

To assess compliance with benchmark 2.1.5, the monitoring team checked the availability of special rules adjusted to the listed categories of officials and did not analyze the provisions for each group in detail but checked that the special regulations or guidelines provided for meaningful special rules/recommendations adjusted to the relevant categories of officials and COI situations that may arise in their work. It will not be sufficient if the special regulations or guidelines duplicate the general legislative provisions on COI management.

In 2022, Article 33 of the LPS did not apply to members of parliament (Deputies of the National Assembly (NA)), judges, members of the Supreme Judicial Council, prosecutors, and investigators, as well as members of community councils (considered as state positions) and administrative heads of the settlements included in the multi-settlement community (considered as administrative positions) as well as discretionary positions.

Judges (element A): The Judicial Code and Law on the Constitutional Court regulate the COI of judges. Pursuant to Article 70 (part 2, point 7) of the Judicial Code, a judge shall avoid COI and exclude any ''impact of family, societal relationships, or relationships of another nature in the implementation of his/her official powers''. No additional clarification of the terms ''family'' or ''societal relationships'' and COI is provided. Since 2 January 2023, provisions of Article 33 of the LPS (parts 1-5, 11) on the definition of COI and private interests, a duty to report COI and abstain from action (inaction), decision-making and preparation for decision-making, is applicable to judges too.

Article 71 of the Judicial Code lists grounds for recusal, particularly when a judge is aware of circumstances that may raise a reasonable doubt about his/her impartiality in a case. In this case, a judge shall disclose grounds of recusal to parties and act based on the decision thereof. Similarly, judges of the Constitutional Court shall also avoid COI and prevent any impact of family, public or other relations on the exercise of official duties (Article 14, Law on Constitutional Court). Self-recusal of a judge of the Constitutional Court shall be made based on the grounds defined by the Judicial Code. Procedures for self-recusal are defined by Article 29 of the Law Constitutional Court. Besides, decision No 05-1 of the General Assembly of Judges defined special rules on COI, such as an obligation to be informed of financial activities and the interests of his or her family members, avoid incompatibilities and reasonable doubts in her/her impartiality during non-judicial activities. Thus, the country is compliant with element A.

Prosecutors (element B): The Law on Prosecution and Order No. 27 of the Prosecutor General provided a narrow scope of COI, and provisions in both legal acts were mostly of declaratory nature. Particularly, Article 72 (part 1, point 6) of the Law on Prosecution states that "the prosecutor is obliged to be autonomous

and unbiased, be independent of the influence of … private interests, public opinion, and other indirect influences''. According to Article 73 (point 1, part 10), a prosecutor shall be impartial, abstain from manifesting biases, discrimination, or creating such appearance, and act in a way that will not create unnecessary doubts regarding his/her impartiality). Article 74 of the Law on Prosecution obliged a prosecutor not to allow a conflict of interest when his family, societal, or relationships of other nature would impact the proper performance of duties. The monitoring team believes that the mentioned legal acts did not define the concepts of COI or private interests, and the means for resolving COI were not explicitly defined. The Law on Prosecution makes, either directly or indirectly, references to the obligations of recusal or self-recusal of the prosecutor (Article 32, point 7 part (2) and point 8, part (2), as well as Article 73, point 1, part 11) as a rule of conduct. However, unlike the Judicial Code, the Law on Prosecution does not provide for the grounds for recusal or self-recusal and the procedure to follow. Thus, the authorities are not compliant with element B. Since January 2023, Article 33 of the LPS applies to prosecutors, and an explicit obligation to immediately inform the Prosecutor General about emerged COI was introduced to Article 74.1 of the Law on the Prosecution.

Members of Parliament (element C): COI among members of the parliament (MPs) is regulated by the Law on Rules of the National Assembly and Law on the Performance Guarantees of the National Assembly Members. Particularly, an MP shall not be impacted by his/her or affiliated persons' private interests, which lead, contribute, or may reasonably contribute to COI. The definition of private interest is limited to the improvement of property or legal status of his/her property or affiliated persons; improvement of property or legal status of non-profit or commercial organizations to which MP or affiliated persons are members; appointment to the office of an affiliated person. When ad hoc COI arises, an MP shall make a statement prior to speech or voting at a sitting of the National Assembly or a Committee in which the MP is a member. When making a legislative initiative and submitting a draft resolution, statement, or proposal, an MP shall submit a written statement describing the nature of the conflict. The regulations cover only the duty of an MP to abstain from voting at the sitting of the National Assembly or the Committee, and other actions and situations not involving decision-making are not covered. The Law lacks clarity on sanctions applicable to COI situations and management of emerged COI. Despite the mentioned deficiencies, the country is compliant with the key aspects required by element C. At the time of the onsite visit, the COI-related concepts applicable to MPs were not aligned with the amendments of the LPS enacted in 2023.

Members of Government (element D): There are no special COI regulations for Government members except for general provisions of the LPS, so authorities are not compliant.

Members of local and regional representative bodies (element E): Members of community councils are subject to the Law on Self-Governance and Law on Self-Governance of Yerevan. Both acts include only a few provisions obliging a member of the council to restrain from participation in the decision-making process when it is related to him/her, his close relatives, or in-laws (parent, spouse, child, brother, sister). A similar regulation was applicable to members of the community council in Yerevan city. Following the recent amendments of the LPS, the definition of the COI in Article 33 also applies to the members of community councils (Article 21.1, Law on Local Self-Government). In case of actual COI, a member of the community council is obliged to immediately inform the council or the head of the community in writing. The monitoring team concludes that these legal acts do not provide details on the COI management and applicable sanctions, and it is not clear if other provisions of the LPS apply to this group. Considering this assessment, the country is not compliant with element E.

Non-governmental representatives believed that the COI regulations for Government members, officials of autonomous bodies, members of community councils, and officials of other collegial bodies were not adapted to Armenian realities. They also mentioned inconsistencies and a lack of practical COI management tools and sanctions in place for members of the parliament and local governance bodies.

Indicator 2.2. Regulations on conflict of interest are properly enforced

Background

Disciplinary sanction for ''an action or making a decision in a situation of conflict of interest'' was foreseen by Article 33 (part 9) of the LPS. Provisions on disciplinary liability were not applicable to persons holding political positions, and persons holding autonomous positions were subject to disciplinary liability only in cases provided for by law.

Assessment of compliance

Enforcement of COI regulations was weak during the assessment period. The Corruption Prevention Commission initiated a few proceedings for violating the incompatibility requirements by a public official and against high-level officials for violation of COI rules, although no sanctions were imposed in 2022. The authorities did not provide information on the cases of detecting and effectively responding to COI-related violations among other public servants. In 2022, the legal framework did not establish measures for revoking decisions or contracts due to violation of COI regulations and suspension/termination of employment or other contracts for violating post-employment restrictions.

Benchmark 2.2.1.

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

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

In 2022, no cases of a failure to report an ad hoc COI among public officials were detected or sanctioned, leading to non-compliance with **element A**. Authorities noted that while the LPS obliged persons without a superior or direct manager or those holding a political position to report to the CPC on a COI situation, there were no measures of responsibility for violating this requirement and tools for their enforcement in the assessment period. Since January 2023, the Code on Administrative Violations (Article 169.31) established sanctions for a public official without a superior for a failure to submit a written statement to the CPC on circumstances related to COI, taking actions (inaction), or deciding before receiving a recommendation from the CPC and acting contrary to the recommendation. However, Article 169.31 of the Code on Administrative Violations does not apply to public officials with superiors.

Non-compliance was established concerning **element B** as well, as the legislation did not explicitly establish sanctions for violating a duty to resolve COI, and accordingly, there were no sanctions for this type of violation in 2022.

Similarly, the amendments that established regulations on the registry of gifts (Articles 29 and 30 of the LPS) and introduced administrative liability for violation of rules on the acceptance of gifts or procedures for their registration in the Code on Administrative Violations (Article 166[1]) entered into force only in January 2023. Therefore, there were no sanctions for violations related to gifts or hospitality in 2022, as required by **element C**.

Article 31 of the LPS foresees responsibility for violating the incompatibility requirements by a public official through termination of powers or removal from office. As reported by the authorities, in 2022, the CPC initiated nine proceedings, including against MPs, regional governors, and a deputy mayor, concerning the violation of incompatibilities. Authorities noted that out of the nine cases of the alleged violation of incompatibility requirements, six cases against Deputies were concluded in the first half of 2023 with the adoption of a decision on the absence of violation of incompatibility requirements, one case was concluded in 2023 with the decision of violation of incompatibility requirements, and two cases were suspended at the beginning of 2023, with the case materials sent to the RA General Prosecutor's Office. No sanctions were imposed in the assessment period, and the country is not compliant with the requirement of the element. According to Article 32 (part 1, point 6) of the LPS, "employment in or becoming an employer of an organization where a public official used to exercise direct control during the last year in the office'' entails disciplinary sanctions. However, in the assessment period, no sanctions were applied against public officials for violations of post-employment restrictions (**element E**).

The monitoring team welcomes the introduction of administrative responsibility for COI violations by officials without supervisors and new rules for accepting gifts. However, these provisions should be extended to other officials. Overall, the monitoring team believes that while the sanctions under the new provisions have not yet been enforced, in cases where the legislation was in place in 2022, a lack of sanctions signals deficiencies in the oversight and enforcement system (see also benchmark 2.2.2).

Non-governmental stakeholders shared the monitoring team's opinion and noted that provisions on registering, analyzing, and verifying oral and written COI statements should be further improved. The stakeholders noted that detailed guidelines on the management of COI and in-depth studies of the practical implementation of the COI regulations were critical.

Benchmark 2.2.2.

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

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

The authorities were not compliant with any of the **elements A-E** of the benchmark, as no sanctions were imposed against high-level officials for the listed violations in 2022. The government provided information on the following relevant cases, which were pending at the time of the monitoring:

1. In December 2022, the CPC initiated proceedings against a regional governor in a case related to the appointment of an affiliated person to the board of a state non-commercial organization. The CPC made a decision on the presence of a conflict of interests in the case on 5 April 2023.[15]
2. One case concerned a head of the community who was reported to have shares in a commercial organization to which a public contract was awarded for AMD 537 million. During proceedings, the CPC detected violations of procurement procedures and sent materials to the General

[15] 994.pdf (cpcarmenia.am).

Prosecutor's Office. The mentioned proceedings were suspended by the CPC on 9 December 2022 and sent to the Prosecutor General's Office.

3. In 2022, the CPC initiated six proceedings against Members of the Parliament for alleged violation of requirements of divesting ownership rights in commercial entities or other business interests. All proceedings were completed in the first half of 2023. According to the authorities, in three cases, it was established that the officials did transfer their shares in commercial organizations to trust management within the prescribed period. In three other cases, the failure to transfer the shares took place, although no violations were recorded by the Commission as it was established that commercial organizations did not carry out actual activities and did not generate profit.
4. In December 2022, the CPC initiated proceedings against the Deputy Mayor with respect to prima facie violation of the incompatibility requirement, who was holding the position of the chairman of the board of directors of the closed joint-stock company. The proceedings were suspended, and the materials were forwarded to the General Prosecutor's Office.

Besides, concerning the prohibition of gifts, the authorities specified that in 2022, due to the legislative gaps, the CPC could not effectively respond to the violations of the restrictions on accepting gifts or apply relevant sanctions. Following the enactment of legislative amendments on 2 January 2023, the regulations on accepting gifts were reviewed, and administrative liability for violating the restrictions on accepting gifts was established by Article 166.1 of the Code on Administrative Offences. As noted, in 2023, the CPC conducted three administrative proceedings for violating the restrictions on accepting gifts.

Benchmark 2.2.3.

The following measures are routinely applied:

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

The legislation does not foresee mechanisms for revoking decisions or contracts due to violation of COI regulations, termination of employment, or other contracts concluded in violation of post-employment restrictions. There were also no provisions on the confiscation of illegal gifts or their value in the reporting period. Accordingly, no measures were applied in line with the benchmark 2.2.3 in 2022.

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

Background

The LPS and respective Decrees regulate public officials' asset and interest disclosure system. Declarations are submitted on an annual basis, also upon entry into public functions and departure from office. The Corruption Prevention Commission can also request the submission of a situational declaration. The LPS defines a list of public officials subject to the submission of declarations and the coverage of information to be disclosed. The asset and interest disclosure also includes information on family members. The declaration forms and rules for submission are in place.

Assessment of compliance

Armenia has a robust declaration system with a detailed regulatory framework. The scope of officials is clearly defined and includes high-ranking elected and non-elected officials; however, members of management or supervisory bodies of state-owned organizations and non-judicial members of judicial governance bodies were not covered. The coverage of disclosed information is broad and includes Immovable property, income, shares in companies, securities, bank accounts, and membership in organizations. However, a few gaps in terms of disclosure still remain. All declarations filed through an online platform are accessible, although the asset declaration system should be strengthened by automatic cross-checking with relevant government databases and providing data in a machine-readable format.

Benchmark 2.3.1.

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

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

The scope of declarants defined by Article 34 of the LPS is broad and covers almost all officials listed in the benchmarks. Namely, it includes the President, members of Parliament, members of government, and their deputies; also heads, deputies, and members of independent state and autonomous bodies, among them the Central Election Commission, the Audit Chamber, and the Central Bank. The regulation also covers market regulators such as the Public Service Regulatory Commission and Television and Radio Commission (chairmen, deputies, and board members). The staff of private offices (advisor, press secretary, assistant) of state political officials also submits declarations on property, income, and expenses. On the local level, heads (mayors) and deputy heads of communities, secretaries of personnel of municipalities, members of the community council with a population of more than 15,000, and heads and deputy heads of the administrative district of Yerevan are subject to declaration requirements. Regional governors (Marz governors) are covered by Article 34 of the LPS too (**elements A-E**).

The Prosecutor General and prosecutors are required to file declarations. There are no prosecutorial governance bodies in Armenia according to the definition used for the monitoring (**element G**).

As regards the judiciary branch (**element F**), all judges and judicial members within the Supreme Judicial Council, the Ethics and Disciplinary Commission, the Training Commission, and the Commission for Performance Evaluation of Judges submit their annual declarations (Judicial Code, Article 69, point 15 and LPS Article 34). Authorities noted that persons holding positions in the first and second sub-groups of managerial positions of civil service and persons holding chief positions in the judicial acts compulsory

enforcement service are obliged to submit a declaration under part 1 of Article 34 of the LPS. However, neither the LPS nor the Judicial Code obliges non-judicial members of these judicial governance bodies (who are not civil servants) to submit a declaration of assets and interests.

In 2022, heads, deputy heads, or members of the executive bodies of state-owned enterprises (SOEs) were not obliged to declare assets. Authorities noted that the 2022 amendments to the LPS broadened the scope of declarants. Particularly, heads of executive bodies (members of the collegial executive body) of state and community non-commercial organizations, foundations established by the state, and the heads of the executive bodies of the commercial organizations with 50% or more of state or community participation were added. The amendment will enter into force in January 2024. Besides, these officials will submit declarations only upon the demand of CPC, which is not in line with the requirement of **element H** of the benchmark.

Benchmark 2.3.2.

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

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

The coverage of disclosed information is also broad and includes most elements listed in the benchmark. Immovable property, vehicles, and any other valuable property (not listed in points 1-5 of Article 40) that exceeds AMD 4 million shall be declared in the property declaration (**element A**).[16] The Guidelines approved by the CPC Decision (N-04-L) specify that if the property is located in foreign countries, relevant identification data shall be provided, and authorities provided relevant examples of declaring this type of property and noted about ongoing cases on a failure to declare immovable property. However, there is no such clarification or explicit requirement on declaring vehicles and other movable assets located abroad, neither in the Guidelines nor in the declaration form or relevant decisions referring to this obligation. Moreover, in relation to vehicles, the Guidelines seem to limit the ''date of acquisition'' to the vehicle registration date in the state-authorized body of Armenia. The authorities are encouraged to explicitly stipulate this requirement for vehicles and other movable assets in the LPS or official guidelines.

A declaration of income (**element B**) establishes an obligation to declare an income together with its source (Article 41) – a person who paid a declarant that was received in a national or foreign currency or an in-kind contribution. The information about income sources includes the name and address of a natural or

[16] http://cpcarmenia.am/files/legislation/352.pdf.

legal person, the country where the income was paid, as well as their nature of the relation. An official shall also specify a sum, currency, and type of income. Income is defined as remuneration for work or other payment, received loans or credits, interest, and other compensation received in return to provided loans, dividends, income generated from agriculture activities, contracts, property rights, entrepreneurial activities, as well as monetary funds or property received as a gift. Thus, the legislation is compliant with **element B**.

Gifts are declared as a part of the income; therefore, their source, amount, and other details noted above (see above) are included in the declaration form. However, the form covers only property or monetary funds received as a gift; in-kind gifts received in the form of work or service are excluded (Article 41 of the LPS, part 4, point 8), so the authorities are not compliant with **element C**. At the same time, Article 29 of the LPS defines the scope of gift more broadly and includes, inter alia, services rendered or work carried out without compensation as well as free-of-charge use of another's property and other actions as a result of which an official receives benefit or advantage.

As concerns **element D** requirements, shares and other types of investment in companies are also declarable items. The following details shall be included in a property declaration form[17] – a company name, a type of equity or investment, a date and a method of acquisition, names and addresses of other parties to the transaction and their relation, a total value, and a currency of stock as well as a percentage of shareholding at the beginning and end of the year. Similarly, bank deposits are covered by a property declaration form, particularly the name and location of local and foreign banks where the deposit was made, currency, and the total amount of deposit at the beginning and end of the year. Savings and all other bank accounts are also disclosed as required by **element E** (parts B 4.3. and B 6.1. of the property declaration form). Besides, monetary funds, including funds available in the bank or electronic accounts and personal loans, are declared. Article 41 requires a declarant to declare existing loans and borrowings through the income declaration form, which covers the lender's name and address, the amount, currency, interest rates, purpose, etc. Thus, the authorities are compliant with **elements D, E, F and G**.

In terms of disclosure of outside employment and activities, all paid activities are covered by the declaration of income, although no explicit provision requires a declaration of all unpaid activities. The authorities noted that unpaid or voluntary membership or involvement mostly refers to non-governmental organisations with non-commercial status and are subject to declaration under domestic law. From their point of view, involvement and membership in political parties, which is subject to declaration, is the most important and risky. The authorities also noted that at the end of each section of the declaration, there is a section - "Additional information", which enables the declarant to fill in all the information and data for which there are no separate subsections. The monitoring team believes that, in a declaration of interest, the membership and involvement in governing, administrative or supervisory bodies of commercial, non-commercial organizations or political parties are being declared (Article 42), and the declaration allows a declarant to provide additional information; however, other forms of voluntary activity for various organisations are still not covered by the legislation explicitly, and thus, not fully in line with **element H** of the benchmark.

As noted above, membership and involvement in governing, administrative, or supervisory bodies of commercial, non-commercial organizations or political parties (**element I**), transfer to share in a commercial organization to trust management are fully declared via a declaration of interest.

[17] arlis.am/DocumentView.aspx?DocID=153169.

Benchmark 2.3.3.

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

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

According to the LPS (Article 42), in a declaration of interests, a declarant shall include a name, an identification number, and an address of a commercial organization where a declarant and/or his or her family members are founders or have shares in an authorized capital or are actual beneficiaries. A declarant shall also disclose an amount of direct or indirect participation (units, stocks, shares), dates of acquisition, or becoming a real beneficiary or when he/she or a member of his/her family acquired powers to appoint or dismiss members of an organization's governing board. A definition of an actual beneficiary is provided by the Law on Combating Money Laundering and Financing of Terrorism. Considering this, the country is in line with **element A**.

Similarly, Article 40 of the LPS also requires declarants to declare a property that belongs to a third party by right of ownership but was acquired on behalf of in favour of or at the expense of the declarant, or the declarant actually benefits from that property or disposes of that property. Decision No. 102-N establishing the forms of declarations of property, incomes, expenses, and interests also encompasses all property (debt and other security, equity securities, vehicles, bank deposits, transports, immovable property) "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." The declaration form covers all key elements required by **element B**, particularly the name of a nominal owner, together with the details about the property (types, location, registration number, nature of the relationship with the declarant).

In terms of **element C**, one-time expenditures exceeding AMD 2 million or foreign currency equivalent or expenses of the same type exceeding AMD 3 million or foreign currency equivalent are included in the declaration of expenses. Among other expenses covered are travel expenses, charges for leasing movable or immovable property, training or other courses, agricultural activities-related expenses, renovations costs, etc. A declarant is obliged to disclose the type, content, amount, and currency of expenditure. However, the form does not include information on the date when the expense was made and, thus, is not compliant with all aspects of this element.

Similarly, non-compliance was established in relation to the disclosure of trusts to which a declarant or a family member has any relation (**element D**). The disclosure covers only the trust management of shares in companies (part 3, Article 42), and the legal framework encompassing trust ownership and similar legal arrangements is not in place. The legislation does not require disclosure of the declarant's or family member's relation to the trust.

Information on the type, origin, currency and amount of virtual assets at the beginning and end of the given year available in electronic accounts and cryptocurrency is disclosed. However, the date of acquisition is not disclosed, which leads to non-compliance with **element E**.

Benchmark 2.3.4.

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

Article 34 (parts 7 and 8) of the LPS requires members of a declarant's family to disclose information on their property, assets, and income upon the official's entry into the office, termination of office, and annually. A broad definition of family members includes the declarant's spouse, minor children (including adopted children), persons under the declarant official's guardianship or curatorship, and any adult person jointly residing with the declarant official. A person is considered as residing together if she/he lives with the official for 183 days or more before a day of entry to the office, upon the termination of official duties, or during the year of declaration. The declaration of family members covers property, income, and expenses, whereas disclosure of interests is included in an official's declaration.

Benchmark 2.3.5.

	Compliance
Declarations are filed through an online platform	✓

All declarations are submitted through an online platform that has been operational since 2015. Hard copies can be submitted in exceptional cases upon preliminary consent of the CPC. According to the CPC Decision N04 of 2020[18], hard copies are allowed in exceptional cases when a declarant does not have access to the e-system. He/she shall (personally or through an administration body[19] exercising control over him/her or through the employer) present grounds for submitting the declaration on paper before the deadline set for submission. Only two declarations (out of a total of 15 598 declarations) were submitted on paper in 2022. Considering the exceptional nature of this provision and that only two such declarations were filed in 2022, the monitoring team considers Armenia compliant. However, the monitoring team recommends stipulating clear criteria based on which the CPC may allow disclosure in such a form.

[18] arlis.am/DocumentView.aspx?DocID=147389.

[19] Supervising authority can be (i) a head of state agency performing enforcement functions in the place of imprisonment; ii) in a military unit or a battalion of the disciplinary battalion, a head of an authorized state administration performing corresponding functions, iii) a head of the medical institution.

Benchmark 2.3.6.

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

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

All declarations are published on the fifth day after their submission on the website of the CPC. Declarations are publicly accessible one year after the termination of the official's duties, after which the CPC shall archive it. Government Decision No 306 N provides a list of data to be published. Restricted data includes the address of immovable property and data on minors except for their names and last names. Thus, the authorities comply with **elements A and B**.

However, the possibility of extracting data from declarations is limited, as declarations are published only as a downloadable PDF file, thereby not being aligned with **elements C and D**. The CPC developed a new online platform that will allow access to data in a machine-readable format. The platform developed through international support was launched and tested at the time of monitoring in 2023.

Benchmark 2.3.7.

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

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

In 2022, functionalities of the electronic system of declarations did not allow for an automated cross-check with the registers of legal entities, civil acts, land titles, and vehicles (**elements A-E**). The difficulty of accessing data in other government registries was also a result of the poor data quality. The authorities informed the monitoring team that an automatic transfer of data from the State Population Register and tax database of the State Revenue Committee to the asset declaration system was ensured in 2022. However, this accessibility was ensured only concerning data regarding individuals, whereas data on companies was requested either by sending inquiries via the e-declaration system or through restricted manual access to the respective databases. The monitoring team welcomes the CPC efforts to ensure

interoperability and direct access to all databases of the State Revenue Committee, State Population Register, State Register of Legal Entities of the Ministry of Justice, Civil Status Acts Registration Agency, Road Police, and Cadastre Committee. The newly launched asset declaration platform was tested at the time of the monitoring visit and, as noted by the authorities, will soon be finalized.

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

Background

The Corruption Prevention Commission is a dedicated body responsible for analyzing and publishing declarations, detecting conflicts of interest, investigating integrity violations, and imposing administrative sanctions. Declaration verification functions are assigned to the Division of Declarations within the Department for Analysis of Declarations. In 2022, out of 15 598 submitted declarations, the CPC verified 3044, including high-level public officials' declarations.

Assessment of compliance

The scope of verification of asset and interest declarations, both in practice and in legislation, is broad and focuses on identifying COI situations and detecting illicit enrichment or unjustified wealth. The broad range of CPC powers to effectively implement its functions are in place and were routinely used in the reporting period. The CPC applies administrative sanctions for false or incomplete information in declarations, including in relation to declarations of persons holding high-risk positions and based on irregularities detected through media sources. However, no criminal sanctions for intentionally false or incomplete information in declarations were imposed. Non-governmental stakeholders positively assessed the CPC work, although taking into account its broad mandate and crucial role in promoting integrity in the public sector, consideration shall be given to strengthening its human, budgetary, and operational resources.

Benchmark 2.4.1.

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

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

According to Article 25 of the Law on Corruption Prevention Commission (LCPC), the agency is responsible for verifying compliance with requirements for completing and submitting declarations by civil servants and persons holding public positions. The Commission also assesses the reliability and integrity of declared data, conducts risk-based analysis, and reviews declarations based on media and written applications. These functions are assigned to the Department for Analysis of Declarations, particularly its structural unit, the Division of Declarations, with seven officials. Armenia is compliant with **element B** (100% score).

The monitoring team welcomes the significant progress in setting up the CPC and developing the respective legal framework. Its active work in 2022 was positively assessed by non-governmental stakeholders as well. However, considering its broad mandate and extensive workload, stakeholders expressed concerns about the agency being significantly understaffed. The importance of continuously building the capacity building of the CPC personnel and equipping it with all necessary human and operational resources has been recognized by all stakeholders as critical for promoting integrity in the public sector. As explained by the CPC, the lack of human resources can be a result of the disproportion of social guarantees, along with the increased functions of the Commission. It was noted that compared to the social guarantees of persons holding positions in other responsible anti-corruption agencies, the remuneration of the CPC members and its staff is not differentiated.

The CPC raised concerns that the nature of the process of preparing its budget as well as developing and implementing programmes related to its mandate could result in insufficient financial independence of the Commission. According to the government, the budgetary preparation and mid-term financial preparation are conducted in the same manner for all independent bodies, including their own budget preparation and submission to the government and its presentation in the Parliament. In this context, the Council of Europe (Parliamentary Assembly) recommended increasing the capacities of the Commission and also considering the possibility of strengthening the status and independence of the dedicated agency through the revision of the Constitution.[20]

Benchmark 2.4.2.

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

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

The mandate of the CPC to verify asset and interest declarations and related legislation was in line with all three **elements A-C** of the benchmark. Particularly, while the detection of conflict of interest is not explicitly stated as an objective of verification, Article 27 of the LCPC indicates that one of the grounds for initiating proceedings by the CPC on a violation of incompatibility requirements, other restrictions, or rules of conduct, and COI is an analysis of declarations (Article 27, part 1). Provided enforcement data shows that violations of conflict of interest and incompatibility restrictions are detected via verification of declarations in practice (see also benchmark 4.5).

Besides, Article 25 of the LCPC stipulates that the Commission ensures compliance with requirements for the completion and submission of declarations and assesses the accuracy and integrity of declared data. If a violation of these requirements is detected, the CPC can initiate administrative proceedings. For more details on the results of verification, see benchmark 2.4.6.

Detecting illicit enrichment or unjustified variation of wealth is not explicitly stated as an objective. Nevertheless, part 7 of Article 25 of the LCPC states that in a case there are doubts regarding significant alteration in assets (an increase in assets and/or reduction of liabilities) or expenditures of a declarant or his/her family member that is not reasonably justified by lawful incomes, the Commission can request

[20] For more information - https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisoires/2021/20211217-ArmeniaInstitutions-EN.pdf.

additional information. Where the declarant, within the specified time limit, fails to provide clarification or additional materials or they are not sufficient to dispel the existing doubts, the Commission shall immediately, but not later than within a three-day period, send the materials to the Prosecutor General's Office. An unjustified variation of wealth is a part of the risk-based analytical tool that is being developed by the CPC (see benchmark 2.4.3).

Benchmark 2.4.3.

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

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

The CPC's dedicated staff dealing with verification has extensive powers (**elements A-C, E, F**) clearly stipulated in the legislation routinely used in practice in 2022, except for access to foreign sources (see below on **element D**).

According to Article 25 (part 2) of the LCPC, while analysing the declarations, the Commission shall be entitled to request and receive (including by e-request) from state and local self-government bodies and other persons information, documents regarding declarants, including information containing bank secret, official information on securities transactions made by the Central Depository, information containing insurance secrecy, as well as credit information or credit history from the credit bureau. During analysis of the declarations, for the purpose of inspecting actual possession of property, as well as the acquisition of the property belonging to a third party by the right of ownership on behalf of, in favour of or at the expense of a declarant or actual benefit of that property or disposal of that property by the declarant, the Commission is entitled to apply to the bodies carrying out operational-investigative activities and obtain necessary information. It can also access registers and databases of state and local government bodies necessary to verify declarations (e.g., State Cadastre, Police, Tax Service, State Registry of Legal Entities, etc.). These powers were widely used during the verification of declarations in 2022, and thus, the CPC is compliant with **elements A and B.**

In addition, the LCPC stipulates that interoperability of the database of the Commission with the databases of state and local self-government bodies, organisations, and on-line access of the Commission to the data subject to be declared shall be ensured. Legislative provisions on the CPC's access to information for verification purposes in Armenia are commendable and can be used as a best practice example.

To access information held by banking and other financial institutions, including information on bank secrets, transactions, safe deposit boxes, accounts, and account balances, the Commission does not

require prior judicial approval and, thereby, is compliant with **element C**. However, the scope of information that could be obtained this way is limited to account balances, information on transactions subject to declaration, and gross input and gross output of the accounts during the required period. For the detailed data on all transactions, the CPC had to request the declarant to provide such information with the possibility of applying administrative sanctions for the refusal to comply with the request. While the scope of information that was accessible was limited, it technically complied with the benchmark's element. The monitoring team recommends extending the scope of the CPC's access to the banking information to include direct access to detailed information on transactions based on the request of the Commission and automating such access. The authorities provided three examples of cases of the CPC's access to Central Bank data about total incoming and outgoing financial flows at the declarant's accounts or individual transactions.

The Commission can demand from a state or local self-government body or the officials to conduct free-of-charge studies, perform free-of-charge expert examinations concerning the circumstances subject to disclosure, and submit the results thereon. The authorities noted that, in practice, the evaluation of an asset's value was often done by the CPC through different platforms. Information about the use of these powers during the verification of declarations was presented to the monitoring team, resulting in compliance with **element E**.

The LCPC (Article 24, part 1, point 7) mandates the agency to consult and provide methodological assistance on incompatibility requirements, other integrity-related rules, and submission of declarations. The authorities also noted that in the assessment period, the CPC organized a series of working discussions and training sessions[21] aimed at increasing the awareness of declarants on the legal framework, procedures, and responsibilities for filling out declarations. Authorities noted that consultants for the declaration process are appointed in all bodies tasked with collecting questions from declarants within their respective institutions/bodies and sharing them with the CPC via email. The CPC provides continuous support to declarants through phone calls and emails. Besides, in 2022, a series of short videos has been developed to assist in the declaration process.[22]

As noted above, the only issue in terms of the scope of the Commission's functions was related to access to foreign sources (**element D**). The LCPC does not explicitly refer to the power of the CPC to access foreign sources of information apart from open sources.

[21] http://cpcarmenia.am/hy/news/item/2022/03/29/2022-03-29/ http://cpcarmenia.am/hy/news/item/2022/04/12/2022-04-12/.

[22] http://cpcarmenia.am/hy/news/item/2022/05/24/2022-05-24/.

Benchmark 2.4.4.

The following declarations are routinely verified in practice:

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

According to the LCPC (Article 25), the Commission conducts an ''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".

In 2022, out of 15 598 submitted declarations, the CPC verified 3044, including declarations submitted by high-level officials, including the Supreme Judicial Council members (34), the National Assembly deputies (45), members of the executive branch (38), and investigators (79). To ensure risk-based verification, in October 2022, the CPC adopted Decision No. 02-L "On establishing a risk standard for the analysis of statements and approving the list of public positions based on it''.[23] Among the listed positions are President, MPs, Prime-Minister and Deputy Prime-Ministers, ministers, and heads of other independent state bodies. The monitoring team was informed that the CPC will complete the verification of declarations of 95 listed public officials and their family members by July 2023. Thus, the authorities are compliant with **element A**.

Element B requires a dedicated agency to address at least three external complaints and notifications, including citizens and media reports. In 2022, the CPC analyzed only one declaration following a citizen's report, and no grounds for proceedings were found; thus, it is not compliant with the requirement of the element. On the other hand, in 2022, the CPC verified the declarations of 17 officials based on their own detection through media publications, which confirms the compliance with **element C**.

As concerns **element D**, in 2022, an automated risk-based analysis was not in place due to the limitations of the system. However, a temporary solution was developed. Particularly, the CPC manually extracted declared data from the e-system into the Excel file and analysed it by cross-checking with data retrieved from various public registries.[24] The risks included a mathematical mismatch between income and expenditures or acquired property, disappearing assets, identified *inter alia* through cross-checking with earlier declarations, and information mismatch with other governmental databases (e.g., number of vehicles, real estate, etc.). The monitoring team notes that the key purpose of the risk-based approach is to help the government select and prioritize the declarations subject to verification based on possible risks, thus reducing the ex officio verifications. The listed criteria the government uses seem to be a part of its ex officio verification. While the criteria such as mismatch between income and expenditures or acquired

[23] http://cpcarmenia.am/files/legislation/779.pdf.

[24] 995.pdf (cpcarmenia.am), page 14.

property help to identify irregularities in the process of verification, it is not clear to the monitoring team how the existing method allows the CPC to filter and select declarations subject to verification and, thus, the country is not compliant with **element D**.

Benchmark 2.4.5.

The following measures are routinely applied:

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

Based on the provided information, the CPC complies with all three **elements A-C**. Particularly, through verification of declarations, in 2022, the Commission initiated eight proceedings on violations of incompatibility requirements against the deputies of the National Assembly, persons holding the positions of a regional governor and a deputy mayor. Besides, the CPC identified possible illicit enrichment or unjustified assets, and three cases were sent to the Prosecutor's Office in 2022. The agency also analyzed one declaration based on a citizen report and reviewed 17 declarations following media publications, and as a result, the CPC applied the administrative penalty in at least three cases.

Benchmark 2.4.6.

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

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

Sanctions for violating the requirements for completing and submitting declarations or negligently submitting incomplete data are foreseen by Article 169.28 of the Code on Administrative Offences. Submission of false information or concealment of information to be declared results in criminal liability (Article 444 of the Criminal Code).

In 2022, the CPC launched 118 proceedings on violations of declaration regulations. In total, 97 proceedings were initiated for not submitting a declaration on time, 20 for submitting incorrect or incomplete data, and one for violating requirements for filling out a declaration and negligently submitting incorrect or

incomplete data. As a result, 107 proceedings were terminated, and an administrative penalty was applied in 8 cases, complying with **element A**'s requirement. The following three cases of routine application were provided:

1. A former MP did not declare participation in commercial organizations in the 2021 declaration on property, income, and interest submitted upon termination of official duties. The CPC imposed an administrative fine of AMD 200,000 decision on July 19, 2022.
2. A head of the community was punished with a warning for not declaring income and membership in non-commercial organisations; the decision was issued on 6 April 2022.
3. A former MP failed to declare a vehicle, immovable property, and participation in commercial and non-commercial organisations in the declaration on property, income, and interest submitted upon termination of official duties. The fine of AMD 200,000 was imposed on 1 December 2022.

Regarding criminal liability, authorities noted that the Anti-Corruption Committee investigated 31 cases for a deliberate failure to submit a declaration and submission of false information. Seven criminal cases against ten persons were sent to the court with an indictment, and in two cases, guilty verdicts were reached by the courts. The first case concerned a former investigator who was fined for not submitting a declaration upon the termination of duties after the imposition of the administrative fine. Similarly, the former deputy of the community was sentenced to one year of imprisonment for failure to submit a declaration of property, income, and interests (later changed to a conditional sentence). However, these cases concern non-submission of declarations, not intentional false or incomplete information in asset declarations as required by **element B**.

Authorities provided information about six cases of administrative sanctions for incomplete or incorrect submission of the declaration imposed on high-level officials in 2022, which is sufficient for compliance with **element C**.[25] The following three case examples were provided:

1. An MP was fined in the amount of AMD 200 000 for a failure to declare the immovable property in his declaration for 2021; the CPC made a decision on 18 July 2022.
2. A minister was punished with an administrative fine in the amount of AMD 200,000 for not declaring the received income and participation of a family member in commercial organizations. The CPC issued the decision on 19 July 2022.
3. Four cases against judges fined in the amount of AMD 200,000 for i) providing incorrect data on bank account balances and incomplete data on the participation of the adult in a commercial organisation and holding a position; ii) incomplete data on immovable property, incorrect data on bank account balances, and incomplete data on the participation of the adults in a commercial organization; iii) providing incomplete data on the income from the lease of immovable property, incorrect data on bank account balances, incorrect data on securities and participation in commercial organisations as well as transferring the share to trust management; iv) providing incomplete data on the income from the lease and alienation of immovable property.

[25] 995.pdf (cpcarmenia.am).

Box 2.1. Good practice – New asset declaration platform

Developed in 2022 and launched in a testing regime in February 2023, the new Electronic Platform for Declarations of Assets, Incomes, Expenditures, and Interests is crucial in enabling the Corruption Prevention Commission to increase the effectiveness of detection of corruption. The system allows the declarants to prepare and file annual declarations by automatically pulling data from various government databases (e.g. cadastral, civil, state revenue, and police) and auto-populate relevant fields of the declaration form, including data from previously submitted declarations.

Assessment of non-governmental stakeholders

The non-governmental stakeholders welcomed the recent improvements to the legal framework on the prevention and management of conflict of interest. They confirmed that many of their suggestions and research insights were taken into consideration by the government. Nevertheless, NGOs believed that the authorities should continue addressing remaining deficits or inconsistencies in the LPS and legal acts establishing COI norms for different categories of public officials. COI regulations either do not exist or are not adapted to Armenian realities for Government members, officials of autonomous bodies, members of community councils, and officials of other collegial bodies. Stakeholders also pointed out inconsistencies and a lack of practical COI management tools and sanctions in place for members of the parliament and local governance bodies. Civil society organizations suggested enhancing procedures for registering, analyzing, and verifying oral and written COI statements. The stakeholders also believed that detailed guidelines on disclosing and management of COI, as well as additional in-depth studies of the practical implementation of the COI regulations, are critical.

Overall, non-state actors acknowledged changes in building and improving anti-corruption institutions and mechanisms since 2019. Nevertheless, some stakeholders were adamant about the lack of results and changes in the integrity culture. Interviewed stakeholders corroborated the lack of sufficient COI enforcement and mentioned the ongoing investigations concerning representatives of the previous government. The lack of an effective investigation of allegations concerning incumbent high-level officials received inter alia from journalists caused significant discontent among the civil society.

As regards the CPC, there was a consensus among stakeholders regarding the progress in setting up, developing a necessary legal framework, and technically equipping the agency. They also positively assessed the efforts to secure relevant funds and international support for its work. However, most stakeholders explicitly referred to the CPC being understaffed, its extensive workload, and a need for continuous capacity building of CPC personnel.

The stakeholders positively assessed the scope and coverage of the legislation on asset and interest declarations. Issues remained in relation to declarations by members of managing boards of SOEs and the ad hoc nature of the submission in some cases. Some non-state actors expressed concern that officials with supervisory functions, municipal officials responsible for granting licenses or permits, as well as assistants and advisors of the community heads are not subject to the declaration regime.

The high level of accessibility and transparency of public officials' declaration data was confirmed. However, NGOs noted that the platform should allow searching and retrieving information from the content of declarations more easily. The onsite meeting and responses to the questionnaire suggested that information on the verification of declarations by the CPC, including statistics on the practice of submission on declarations, detected violations, initiated proceedings, and progress, shall be communicated more consistently.

3 Protection of whistleblowers

Armenia has a dedicated law on whistleblower protection that was upgraded with important changes in December 2022. As the enactment of the new amendments was outside the evaluation period, they did not impact the compliance ratings. After the changes, the Law on the System of Whistleblowing presented a solid basis for protecting reporters of corruption. Although the Law still had gaps, the main problems concerned the lack of enforcement and the need to build trust in the reporting channels and available protection measures. In practice, most whistleblower reports were submitted through an online platform that allowed anonymous submissions. There have been no cases when the whistleblower required protection, which means that the provisions on the protection and different remedies available to whistleblowers have not been tested in a real case. The internal reporting channels were not clearly set up in the law or in practice, and the capacity to grant effective protection to whistleblowers remained questionable. The Human Rights Defender received the responsibility for monitoring the enforcement of the whistleblower protection legislation but had no dedicated unit or staff dealing with these responsibilities.

Figure 3.1. Performance level for Protection of Whistleblowers is average

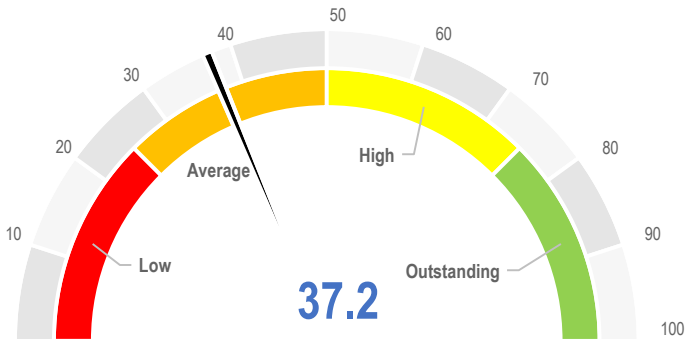
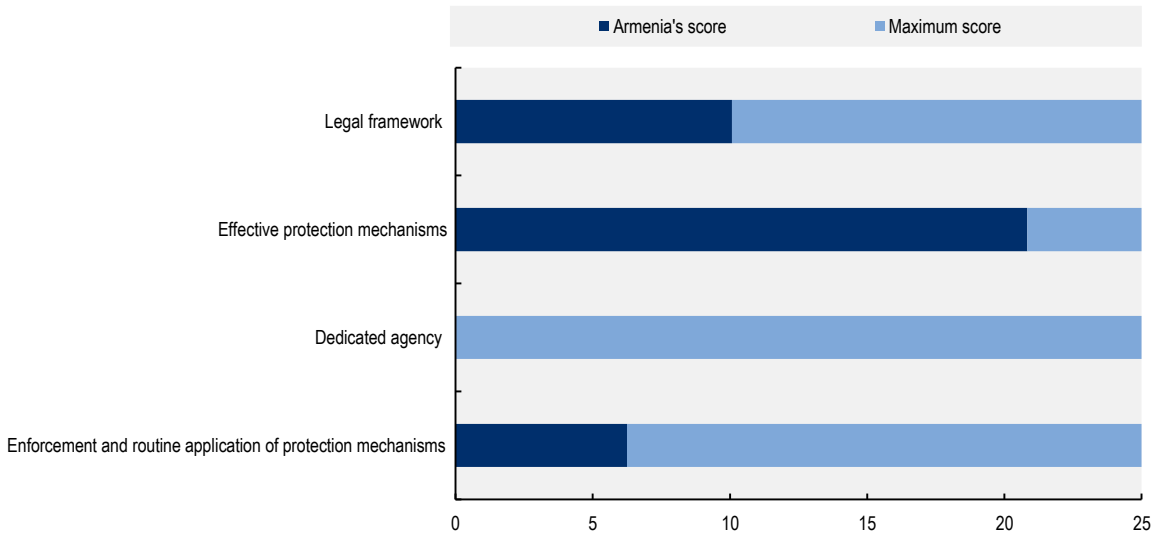


Figure 3.2. Performance level for Protection of Whistleblowers by indicators



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

Background

The Law on the System of Whistleblowing was enacted in 2018. In December 2022, the parliament introduced important amendments to the Law, improving its provisions, particularly by including the public channel of reporting and shifting the burden of proof in whistleblower protection cases to the defendant (employer). A separate set of amendments adopted in December 2022 assigned additional powers in the area of whistleblower protection to the Human Rights Defender. The 2022 amendments were enacted on 1 January 2023 and cannot impact the compliance ratings in this assessment as the enactment happened outside of the evaluation period limited to 2022.

Assessment of compliance

In Armenia, the Law on the System of Whistleblowing guarantees the protection of whistleblowers. The law granted protection to reporters of corruption-related wrongdoing at the workplace and even extended to candidates for public office, which exceeded the benchmark and was a positive practice. However, the law imposed a duty on the reporting person to check the reported information and disqualified whistleblowing based on a motive, namely, if the person demanded or obtained an advantage because of reporting. The legislation extended to reporting in state bodies (including in defence and security sectors), local self-government bodies, and public organisations but did not cover private sector employees and board members in SOEs – a deficiency addressed by the 2023 amendments. The burden of proof in the disputes about the protection of whistleblower's rights has been shifted to the employer in the administrative proceedings and judicial proceedings (since 2023 for the latter). Only a limited number of whistleblower protection measures were available in 2022 (protection of identity and state legal aid).

Benchmark 3.1.1.

The law guarantees the protection of whistleblowers:

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

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

In Armenia, the primary law (Law on the System of Whistleblowing - LSW) guarantees the protection of whistleblowers as required in the benchmark.

According to the LSW, whistleblower protection extends to persons reporting cases of corruption, violations concerning conflict of interest, rules of conduct, incompatibility requirements, and other anti-corruption restrictions. It conforms with the definition of "corruption-related wrongdoing." The whistleblower definition in the Law is also in line with the "at their workplace" element. The Law even extends the protection to candidates for public office, which exceeds the benchmark and is a positive practice.

As to the "believed true at the time of reporting," the Law requires that the report is made in good faith, which is satisfied if the reporting person complied with all three following conditions: 1) had reasonable grounds for suspicion of a violation; 2) believed the information was veracious; and 3) before whistle-blowing, had undertaken measures to verify the veracity and completeness of the information within the person's real opportunities. The last condition that requires verifying the allegation's accuracy and completeness is problematic, as it goes beyond "believing true at the time of reporting" and imposes an additional duty to check the information, which should not be the reporting person's obligation. Thus, the country is not compliant with **element A** of the benchmark.

The LSW requires that the reporting person acts in good faith. In addition to a condition of "good faith" described above, the Law also assumes that the person acts in bad faith if: 1) the whistleblowing was committed unlawfully, including on the basis of information acquired through the commission of a crime or violation of the constitutional rights of a person; 2) the person demands or gains any advantage for himself or another person; or 3) the person intentionally provided false information in order to cause harm to another person. The requirement to act in good faith is not problematic here because it is not defined through the person's motives. But the disqualifying condition if the person demands or obtains an advantage concerns person's motives for the disclosure (for example, trying to avoid the imminent dismissal) and is, therefore, not in line with the benchmark's **element B**. As there have been no whistleblowing cases so far, there is no practice to test the legal requirements. Representatives of the different government institutions had a diverse interpretation of the conditions for the bad faith qualification.

Public interest is not required in the Law on the System of Whistleblowing and, thus, Armenia is in line with the requirement of **element C**.

Benchmark 3.1.2.

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

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

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

The LSW and respective bylaws extend to reporting in state bodies, local self-government bodies, and public organisations, thus complying with **element A**.

However, during the evaluation of 2022, the LSW did not extend to the private sector employees, as required by **element B**. Amendments enacted in January 2023 extended the Law's definitions of whistleblower and whistleblowing to all organizations, including in the private sector. However, it appears that Article 6 LSW restricts internal whistleblowing only to public sector employees, which deprives private sector employees of the possibility to use the internal reporting channels. This means that private sector employees may not be sufficiently covered by the whistleblowing protection legislation, even considering the amendments enacted in 2023. To be compliant with this element, Armenia also needs to ensure that not only the LSW but also other related legislation (notably the procedures and templates approved by the Government decisions nos. 272 and 439 of 2018) apply to the private sector whistleblowers.

The 2022 amendments extended the definition of whistleblowing and whistleblowers to all organizations and linked them to persons who have "other relations" with the organisations, which are not only based on employment or civil contracts. However, the amendments do not concern the evaluation period of 2022, leading to non-compliance with **element C** of the benchmark.

Benchmark 3.1.3.

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

The LSW did not differentiate among different public sector employees and, on the face of it, applied to all types of institutions, including the defence and security sectors.

Benchmark 3.1.4.

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

The amendments of December 2022 stipulated in the LSW (Article 12) that the defendant (employer) bears the responsibility of proving the legality of the action or inaction taken against the whistleblower. This provision applies only to the judicial proceedings because Article 12 (as follows from its title) concerns judicial protection. The Civil Procedure Code (Article 62) stipulates that each person participating in the case is obliged to prove the facts underlying their claims and objections and relevant to the resolution of the case unless otherwise provided by this Code or other laws. According to the authorities, the latter provision, taken together with the amended Article 12 LSW, will shift the burden of proof on the employer in whistleblower protection disputes. There has been no case law to test this assumption. In any case, the amendment in the LSW was enacted in January 2023, which is outside of the evaluation period.

Under the Administrative Procedure Law (Article 29), the general rule is that the burden of proof lies with the administrative body. Article 43 of the Law on the Basics of Administration and Administrative Proceedings stipulates that "in the relationship between a person and an administrative body, the burden of proof is borne by: a) the person, in the presence of favourable factual circumstances for him; b) the administrative body, in the presence of unfavourable factual circumstances for the person." In addition, there is a presumption of reliability in administrative proceedings: information provided by a person regarding the factual circumstances discussed by the administrative body is considered reliable in all cases until the administrative body proves the opposite (Article 10 of the Law on the Basics of Administration and Administrative Proceedings). In the absence of the case law, altogether, these provisions appear to be sufficient to shift the burden in the administrative proceedings.

Benchmark 3.1.5.

The law provides for the following key whistleblower protection measures:

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

The LSW provides for the whistleblower's identity protection, as foreseen by **element A** of the benchmark, by prohibiting disclosing or sharing personal data without the person's consent. The prohibition to disclose the whistleblower's identity is reinforced by the administrative and criminal sanctions for illegal publication or other disclosure of the whistleblower's information (Article 41.5 of the Code of Administrative Offences and Article 502 of the Criminal Code).

To receive "special protection," a whistleblower may apply to the competent authority, which is obliged to promptly decide on the application and, in case of a positive decision, send it to the police to carry out the protection measures to the extent that they are applicable mutatis mutandis as prescribed by the Criminal Procedure Code (a provision enacted in January 2023, which is outside of the evaluation period). The Criminal Procedure Code (Article 73) also allows the Human Rights Defender to request "the body implementing the proceedings" to apply special protection measures to the whistleblower and related persons, on their own initiative or based on the person's application. This provision, however, refers to "the body implementing the proceedings," which means an investigative authority conducting a preliminary investigation in a criminal case. This limits the special protection (at least when requested by the Human Rights Defender) to situations when the whistleblowing report concerns a crime and there is an ongoing criminal proceeding. The monitoring team is also concerned by a broad definition of "competent authority": the definition covers all state bodies, local self-government bodies, and public organizations; the same definition relates to the competent authority as a recipient of external whistleblowing reports and the competent authority that receives applications for the special protection of whistleblowers. It is not clear from the law to whom exactly the whistleblower should address the external reports and request special protection. Considering this, the country is not compliant with **element B**.

According to the LSW (Article 10, part 3.3), a whistleblower may not be subject to any liability for whistleblowing except where his or her act contains elements of a crime. This provision releases the whistleblower from liability only if the act of whistleblowing does not constitute a criminal offence. Such a condition is problematic because it excludes whistleblowing protection, for example, when the report involves a prohibited use of classified information. This is a broad exception that is not limited to cases when the whistleblower committed a criminal offense in order to obtain the reported information (see Guide to the benchmark). For example, the reporting person may obtain classified information lawfully, but its use for reporting an offence may be criminally liable. In any case, the new Article 10, part 3.3., was enacted in January 2023, which is outside of the evaluation period. As a result, Armenia is not compliant with **element C**.

In terms of protection from all forms of retaliation at the workplace (**element D**), according to the LSW, a whistleblower has the right to protection from harmful actions and their consequences, and harmful actions are defined sufficiently broadly. Armenia is compliant with the benchmark's element D.

Benchmark 3.1.6.

The law provides for the following additional whistleblower protection measures:

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

Out of the listed in the benchmark additional whistleblower protection measures, only state legal aid (**element B**) was available in 2022 (for key protection measures, see benchmark 3.1.5). Particularly, according to the authorities, a whistleblower may qualify for free legal aid on the general conditions stipulated in the Law on Advocacy. The latter (Art.41) affords free legal aid to insolvent natural persons who submit reliable data confirming their insolvency.

Under the LSW (Article 10, part 2.1.), a whistleblower has the right to receive an advisory confidential consultation and legal assistance from the Human Rights Defender. However, this provision was enacted in January 2023, which is outside of the evaluation period, thereby leading to non-compliance with **element A**.

Compensation in **element C** of the benchmark means financial compensation for the damage suffered by the whistleblower as a result of any form of retaliation in the workplace. According to the LSW (Article 10, part 3.1.), while protecting their rights, a whistleblower shall enjoy the means of protection provided for by the Civil Code and other laws of the Republic of Armenia. As the compensation for damages is regulated by the Civil Code and Labour Code, the whistleblower may claim compensation under these codes. However, this provision was enacted in January 2023, which is outside of the evaluation period. To give visibility to the possibility of compensation and to remove doubts that the relevant provisions on compensation in the Civil Code and/or Labour Code are applicable, it would be preferable to mention explicitly in the LSW that a whistleblower has the right to compensation for the damage suffered according to the Civil Code and other applicable laws.

Element D of the benchmark requires that the law provides the legal remedy of reinstatement in a court when a whistleblower is subject to dismissal, transfer, demotion, or the remedy of restoration of a cancelled permit, license, or contract due to having made a report on corruption-related wrongdoing. The authorities refer to Article 10, part 3.1. (cited above) as a ground for applying this protection measure. However, this provision was enacted in January 2023, which is outside of the evaluation period. Also, the provision in the LSW may be insufficient and may need to be reflected explicitly in the Labour Code to be directly applicable. The Labour Code does not provide for the possibility of reinstating the whistleblower if he/she was dismissed due to the report of an offence. The existing provisions of the Labour Code may be limiting. For example, Article 265 provides for the restoration of the employee's violated rights if "the terms of employment have been changed, the employment contract with the employee has been terminated without legal grounds or in violation of the procedure established by the law." This provision may be hard to overcome in the case of a whistleblower whose employment was terminated formally on legal grounds but motivated by retaliation. Armenia is not compliant with element D.

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

Background

In 2022, all potential whistleblower reports were received through an online platform operated by the Prosecutor's General's Office. Out of total 166 reports, 74 were anonymous (the online platform was the only vehicle for submitting such reports). In total, 82 whistleblower proceedings were initiated, and nine criminal cases started. There were no cases of whistleblower protection measures requested or afforded in practice in 2022.

Assessment of compliance

The law provided for the possibility to submit a report internally, but there was no explicit obligation for the public sector organisations and SOEs to set up internal channels. The only clearly designated channel for external whistleblowing was the online platform run by the Prosecutor General's Office. The possibility of public disclosure was introduced, but it became effective in 2023, which was outside of the evaluation period. Whistleblowers could submit reports through a unified electronic platform for whistleblowing that has been operational since 2019. Anonymous reports were allowed, and the anonymous reporting persons were entitled to protection once their identity was disclosed.

Benchmark 3.2.1.

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

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

The channel must be available in practice, which means that whistleblowers can use it to make reports and that no obstacles preclude whistleblowers from using them. Under this benchmark, the monitoring does not require proof that each channel has been used in practice, only that it was provided in law and available in practice.

Element A requires that internal reporting channels are available at the workplace in the public sector and SOEs. The LSW provides for the possibility to submit a report internally, but there is no explicit obligation for the public sector organisations and SOEs to set up internal channels. The Law directs the whistleblower to submit the report to an immediate supervisor, a superior official, or another person exercising supervision over him or the person authorised by the head of the competent authority. The Government decision no. 272 of 2018 established the requirement to designate persons responsible for the recording and processing of whistleblower reports in each public organisation and inform the organisation's employees about such persons. However, designating responsible persons is not the same as establishing the reporting channels, for example, a dedicated telephone line, email, or web form for submitting internal reports. Also, the Government's decision sets the requirements for recording and processing whistleblower reports when received by the designated persons, but there is no regulation on what happens if the report

is submitted to the immediate supervisor, a superior official, or another person exercising supervision over the whistleblower.

The authorities did not provide data on the use of internal reporting channels in public organisations. According to the 2020 survey conducted by Transparency International in Armenia, out of 57 state bodies, only the Ministry of Defence received whistleblower reports through internal channels.[26] There is also no information on how the Government decision no. 272 was implemented in the public organisations, in particular, whether all institutions have designated responsible persons, adopted procedures for receiving and processing reports, and disseminated information about the responsible persons and how to report violations to them. The Government provided an example of the respective internal order adopted in the Prosecutor General's Office. Considering the above, Armenia is not compliant with **element A**.

"External channels" (**element B**) means that the law designates at least one public sector body to receive reports of corruption-related wrongdoing that persons covered under whistleblower legislation may report to the outside of their place of work. The LSW establishes that external reports should be submitted to the competent authority. However, the Law does not differentiate between competent authority as an organisation that employs the whistleblower and an external organisation. The definition of a competent authority is broad and includes "a state and local self-government body, state and community organisation, public organisation of the Republic of Armenia, which is obliged, by ensuring the guarantees prescribed by this Law, to process the whistleblowing." So, in practice, the whistleblower may not know to what agency refer the external report. The only clearly designated channel for external whistleblowing is the online platform run by the Prosecutor General's Office. The platform is the only destination where an anonymous whistleblower report may be submitted, but the platform may also receive other reports. The anonymous reports may concern both corruption crime reports and reports related to conflict of interests, incompatibility, and violation of other restrictions. The latter will be redirected by the Prosecutor General to the CPC. Because of the operation of the online platform that can be used for external reports (see the table under the next benchmark showing statistics of the platform's use), the monitoring team considers Armenia compliant with **element B** of the benchmark.

As concerns the possibility of public disclosure (**element C**), it was introduced through amendments adopted in December 2022 but enacted in January 2023 and, that is outside of the evaluation period. According to Article 9.2, if the report submitted through other channels was not processed in the manner and time limits provided by the law, a whistleblower may inform the public about the report through the mass media. Therefore, public disclosure before using first internal or external channels is not allowed, including cases when corruption-related wrongdoing presents an imminent or manifest danger to the public or where there is a risk of retaliation or a low chance of the breach being addressed by reporting through external channels (see the Guide).

The Law mentions the availability of internal and external channels and does not restrict the alternative use of one or both. Even though the right to choose is not explicitly provided, the existing provisions are equivalent in their effect and, thus, still compliant with **element D**. For the future, it is advisable to confirm this interpretation in the official guidelines or through an explicit provision in the law.

[26] OECD/ACN (2022), Pilot 5th Round of Monitoring Report on Armenia, 2022, page 61, www.oecd.org/corruption/anti-bribery/corruption/acn/anti-corruption-reforms-in-armenia-e56cafa9-en.htm.

Benchmark 3.2.2.

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

According to the LSW, a whistleblower may anonymously submit a report through the unified electronic platform for whistleblowing that has been put into operation in 2019. While the platform's main objective is to collect anonymous reports, reports where persons identify themselves may also be submitted through the platform. The platform qualifies as a central electronic platform for whistleblowing required by the benchmark. In 2022, 116 reports were submitted through the platform (see table 3.1. below). In the monitoring team's opinion, the platform's functionality could be expanded to receive internal whistleblower reports, whereby the reporting person could choose whether to submit the report to the designated person in the organisation where the reporting person works or externally to the competent authority, by using one of the two corresponding options that the platform would provide. The designated persons in public organisations would need access to the platform to review and reply to such internal reports, preserving the confidentiality or anonymity of the reporting person.

Table 3.1. Reports received through the electronic whistleblower platform

Reports received	2022 year	Explanation
Total number of reports received	116	All reports were related to cases of alleged corruption crimes
Anonymous reports (out of total number)	74	
Whistleblower proceedings initiated (out of total number)	82	
Reports rejected (out of total number)	34	
Criminal case initiated (out of total number)	9	All cases were under pre-trial investigation as of April 2023

Source: Information provided by the Armenian authorities.

Benchmark 3.2.3.

Anonymous whistleblower reports:

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

Article 9 LSW stipulates that a whistleblower shall submit an anonymous report through the unified electronic platform. This means an anonymous report can be filed only through the online platform and no other channels, such as the internal ones. Because the online platform operates as a central mechanism for receiving external reports, Armenia is compliant with **element A**. Besides, Article 9, part 5, LSW extends *mutatis mutandis,* the procedure and protection granted for external reports in Article 7 to anonymous reporting which is in line with **element B**.

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

Background

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

Assessment of compliance

There was no dedicated agency, unit, or staff responsible for the whistleblower protection framework in Armenia in 2022. The Human Rights Defender could not be considered such a body because it performed other functions, and there was no dedicated unit or staff within the Defender's office. As there was no dedicated agency, unit, or staff, all benchmarks of this indicator were considered non-compliant. However, the report provides an analysis under the benchmarks that would be applicable were a dedicated unit or staff set up within the Human Rights Defender's office or another institution.

Benchmark 3.3.1.

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

The authorities referred to the Human Rights Defender as the dedicated authority. However, as the Human Rights Defender performed other functions and there was no dedicated unit or staff within the Defender's office, the monitoring team considers that there is no dedicated agency, unit or staff responsible for the whistleblower protection framework in Armenia, according to this benchmark.

As there was no dedicated agency, unit, or staff, benchmarks 3.3.2. - 3.3.4. are considered non-compliant as well.

Benchmark 3.3.2.

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

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

Armenia was not compliant with this benchmark's elements as it did not have a dedicated agency, unit, or staff responsible for whistleblower protection. The analysis below considers the situation if the dedicated unit or staff were set up within the Human Rights Defender's office.

As to **element A**, authorities refer to Art. 73 of the Criminal Procedure Code, which, however, concerns the application for special protection measures, not receiving and reviewing complaints about retaliation against whistle-blowers. At the same time, under the Law on Human Rights Defender (Article 24 as amended in 2022 and enacted in 2023, which is outside of the evaluation period), the Defender has the power to apply to the competent state or local self-government body, official or organization, proposing to take measures to protect and restore the'whistleblower's violated rights.

For **element B**, the Law on the Human Rights Defender does not explicitly stipulate the right to receive and act on complaints about inadequate follow-up to reports received through internal or external channels or violations of other requirements of whistleblower protection legislation. The new Article 30.2 added in December 2022 (enacted in 2023, which is outside of the evaluation period) provides that the Defender "contributes to the restoration of whistleblowers' rights and freedoms." The Defender can "monitor the implementation of protective and rehabilitation measures," but it is not clear if this is a supervisory power or whether it concerns only the collection of information and does not allow reacting to cases of non-compliance with the legislative requirements. As noted above, the Defender also has the power to apply to the competent state or local self-government body, official or organization, proposing to take measures to protect and restore the whistleblower's violated rights.

Finally, regarding **element C**, Article 30.2 of the Law on the Human Rights Defender clearly stipulates that the Human Rights Defender should summarize and publish the report and statistics related to whistleblowing in the annual report based on the relevant statistical data of state and local self-governing bodies related to whistleblowing. The report and statistics shall at least contain information on the reports submitted by whistleblowers to the competent authorities (by types and forms) and the protection provided to whistleblowers. Article 30.2 was added by the amendments that were enacted in January 2023, which is outside of the evaluation period.

Benchmark 3.3.3.

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

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

Armenia was not compliant with this benchmark's elements as it did not have a dedicated agency, unit or staff responsible for whistleblower protection. The analysis below considers the situation if the dedicated unit or staff were set up within the Human Rights Defender's office.

Regarding **element A**, it appears that the power to initiate protective or remedial measures is provided in the Law on the Human Rights Defender. However, relevant provisions in Article 24 of the Human Rights Defender Law were enacted in January 2023, which is outside of the evaluation period.

As to **element B**, the power of the Human Rights Defender to apply to the competent state or local self-government body, official or organization, proposing to take measures to protect and restore the whistleblower's violated rights does not qualify as "imposing or initiating imposition of sanctions or application of other legal remedies against retaliation."

Benchmark 3.3.4.

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

The new functions in the area of whistleblower protection were assigned to the Human Rights Defender by the law that came into force on 1 January 2023 (which is outside of the evaluation period), but the Human Rights Defender is not considered a dedicated agency, nor is there a dedicated unit or staff within the Defender's office.

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

Background

There were no cases of whistleblower protection requests or measures taken to protect whistleblowers in 2022.

Assessment of compliance

In 2022, there were no cases to test the whistleblower protection system's operation. The non-governmental stakeholders explained it by a very low awareness and trust of public officials in the internal and external reporting channels, which was partly attributed to the cultural objections to reporting misconduct. For the lack of practice, Armenia was not compliant with benchmarks of this indicator (except for 3.4.4.).

Benchmark 3.4.1.

	Compliance
Complaints of retaliation against whistleblowers are routinely investigated	X

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

Benchmark 3.4.2.

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

There is no information that administrative or judicial complaints were filed in 2022.

Benchmark 3.4.3.

The following protections are routinely provided to whistleblowers:

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

There is no information that any of the mentioned protections were applied in 2022.

Benchmark 3.4.4.

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

The monitoring team is not aware of any cases where breaches of confidentiality of a whistleblower's identity were not investigated and sanctioned.

Assessment of non-governmental stakeholders

According to the non-governmental stakeholders, the whistleblower protection system is not functioning properly in practice in Armenia. There is a very low awareness and trust of public officials in the internal and external reporting channels, which is partly explained by the cultural objections to reporting misconduct. The perception is that the reporting channels are not developed, and what channels are available is not well-known to officials. Reportedly, there is also a low trust in the online platform as there are doubts that the reports are reviewed by the Prosecutor General's Office and do not end up with the organisations where whistleblowers work. The interlocutors were also concerned by the lack of guarantees or sufficient assurances from the government that the online platform provides anonymity and can be trusted in this regard. Similarly, despite the liability provisions, public officials and other stakeholders do not believe that the confidentiality safeguards in the law are effective.

4 Business integrity

Armenia had a Corporate Governance Code, but its compliance monitoring remained weak. The Government has started revising the Code through a process that has been ongoing for several years without a precise end date. The governance of state-owned enterprises (SOEs) was not in line with international standards; SOEs were not covered by the integrity framework, and corruption risks remained high. The SOEs had a low level of transparency and poor reporting. Armenia has introduced the mandatory disclosure of the company's beneficial ownership through a phased process that should conclude in 2023. Now, it should ensure effective verification of the disclosed information and free public access to beneficial ownership data. There was no dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities in Armenia, even though the business sector would welcome such a mechanism. Should the Human Rights Defender be assigned this mandate, it should be provided with additional resources, including dedicated staff and powers to implement it.

Figure 4.1. Performance level for Business Integrity is low

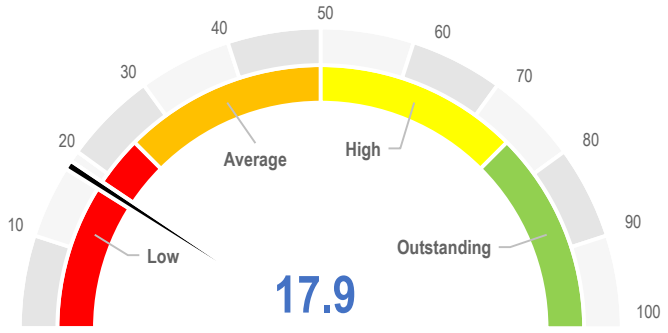
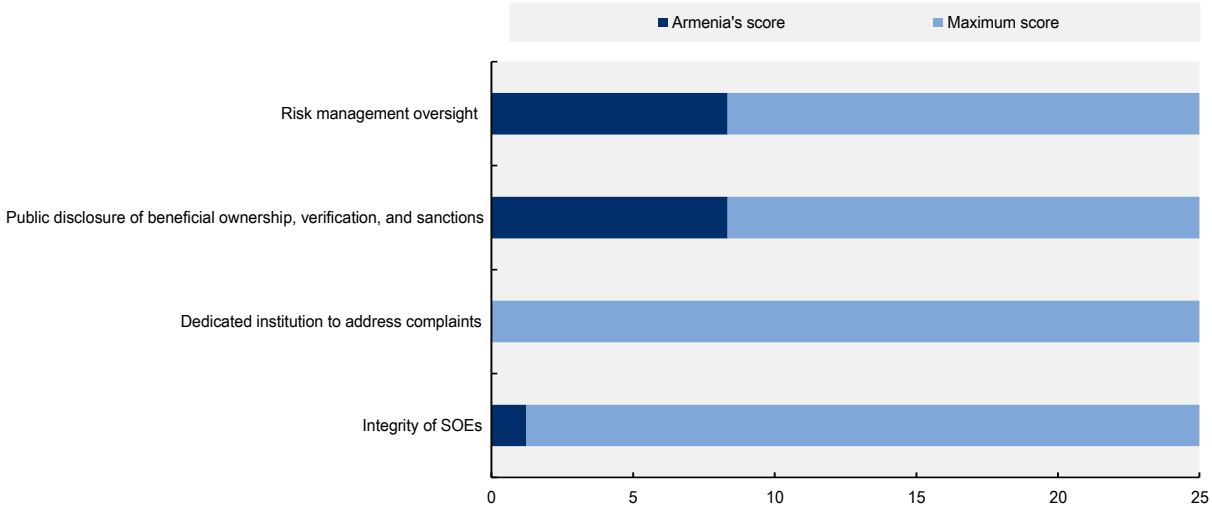


Figure 4.2. Performance level for Business Integrity by indicators



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

Background

The current Corporate Governance Code (CGC) was adopted by the Government of Armenia in 2010. The CGC is not mandatory for private companies, though companies listed on the stock exchange are required to disclose information about its implementation in their annual reports and on the website of the exchange. The Government stated that they have re-started the preparation of a new Corporate Governance Code, which had been under consideration during the past several years, but the timing of the adoption of the new code is not clear.

Assessment of compliance

The Corporate Governance Code, adopted by the Government of Armenia in 2010, established the responsibility of listed companies' boards to oversee overall risk management but not specifically related to corruption risks. The CGC is not a legally binding document but includes recommendations to be followed by listed companies and other companies (for example, banks, insurance companies). The rules issued by the Armenian Securities Exchange stipulated that the issuer of securities, listed or applying for listing on the Exchange, must accept and apply at least the principles set forth in the CGC unless it had already applied equivalent or stricter principles of corporate governance. While several entities may have the authority to oversee compliance with the CGC, there was no evidence that it was done in practice.

Benchmark 4.1.1.

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

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

According to the 2010 Corporate Governance Code (the "CGC" or the "Code"), the board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls that enables risk to be assessed and managed. The board is responsible for ensuring that appropriate systems of internal control are in place, in particular, systems for monitoring risk, financial and accounting control, and compliance with laws and regulations. The board may establish a risk-management committee and corporate governance committee, while for banks' boards, establishing a risk management committee is required. The board should also develop a code of ethics, with clear policies and procedures for directors, management and employees on issues such as the use of confidential information; corporate values; business behaviour; relationship with governments and officials; relationship with competitors; 'whistleblowing' arrangements; use and care of the company's property; use of "insider" information; disclosure of potential conflicts of interest; handling of external gifts; observance of laws and regulations; working relations between employees; reporting of breaches of the code of ethics and protecting the confidentiality of such reporting; behaviour towards stakeholders. The Law on Joint Stock Companies and the CGC also require establishing an Audit Committee attached to the board that is responsible, among other tasks, for carrying out internal control of the company, including inspection over the operation of the systems of risk management, conformity with laws, legal acts in force and other requirements (the Law on Joint Stock Companies) and "to review the company's internal control, internal audit, compliance and risk management systems" (CGC). Considering this, the authorities are compliant with **element A**. However, the CGC or other documents do not explicitly establish the responsibility of listed companies' boards to oversee corruption risk management, which is required by **element B** of the benchmark.

The CGC is not a legally binding document but includes recommendations to be followed by listed companies and other companies (for example, banks, insurance companies). The CGC also notes that, among others, listed companies, banks and state-owned enterprises are required to report their level of compliance with the Code in their annual corporate governance statement that is part of their annual report.

The Law on Joint Stock Companies (article 87.1) is mandatory and requires setting up an audit committee that inspects the risk management system's operation. Article 8.47 of the Rules on Securities Listing and Admission to Trading of the Armenian Securities Exchange (the only securities regulated market operator in Armenia) stipulates that the issuer of securities, listed or applying for listing on the Exchange, should accept and apply at least the principles, set forth in the CGC, unless it had already applied equivalent or stricter principles of corporate governance. The Government stated that state-owned enterprises do not have to implement the CGC, but some state-owned enterprises in the energy sector have decided to do so voluntarily (the Nuclear Power Plant was mentioned as an example). The non-governmental stakeholders noted that SOEs (with 50% or more state ownership) were required to report on the basis of the CGC according to Government Decree No. 881 of 23 June 2011. The monitoring team could not verify it as the mentioned decree was not available to it. The monitoring team considers Armenia compliant with **element C**.

Benchmark 4.1.2.

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

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

The replies by authorities were ambiguous and stated that the legislation did not provide for an authority responsible for overseeing compliance of listed companies with the CGC (**element A**). The Code itself does not provide that it is mandatory for listed companies, and neither does the Code identify an authority for monitoring compliance. Although the Government stated that the legislation does not identify a supervisory authority, the Government also referred to other legislation that mandates listed companies to comply with the requirements under the CGC (see also benchmark 4.1.1) and that this legislation does list a responsible authority. The Government referred to Articles 47 and 79 of the Listing Rules requiring compliance with the principles set out in the CGC as a mandatory pre-requisite for listing/admission to trading (unless applied equivalent or stricter principles of corporate governance). Armenia Securities Exchange (the "Exchange") exercises ongoing monitoring of compliance with the requirement (Article 83 of the Listing Rules). The listed companies publish their compliance or explain their non-compliance with the CGC on their websites or on www.azdarar.am website, which is the official website of public notices in Armenia.

According to the Government, the Exchange monitors actual compliance by listed companies of the CGC (for instance, how risk management is implemented, how many board members are independent, what are the responsibilities of the Board and management). However, this is not clear from the applicable legislation. Moreover, the Government also stated that the majority of listed companies are banks, and for them, the Banking Law provides for stricter corporate governance standards and board supervision, including a mandatory internal control system (Articles 21.3-21.6 of the Banking Law). The Central Bank of Armenia (the "CBA") noted that they as the supervisory authority for banks conducted monitoring of compliance with the CGC by listed banks.

Finally, the Government mentioned that the legality of corporate actions is checked by the Central Depository of Armenia (the "Depository"), which provides to companies services associated with registrations and transfers within the framework of corporate actions. Such registrations and transfers are executed only after the Depository is assured – after verifying – that the corporate action was performed in strict compliance with relevant laws and regulations (including founding documents and corporate

procedures). The Government did not provide the legal basis for monitoring by the Depository nor proof thereof, so it is not clear to the monitoring team what the scope of the powers of the Depository is.

In terms of practice, as noted above, the Government did not provide proof to the monitoring team of the relevant authorities conducting monitoring of compliance in practice. Thus, the authorities are not compliant with **elements A and B.**

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

Background

The Law on State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs regulated registration of companies in the State Unified Register of Legal Persons, established under the Ministry of Justice and run by the State Register Agency of Legal Entities of Armenia. Since 2022, the information collected during registration included information on beneficial owners. The obligation to submit such information was rolled out to different types of legal entities in stages.

Assessment of compliance

In 2022, Armenia started collecting information about beneficial owners of companies in practice, but the requirement did not extend to all legal entities as it was introduced in phases. The definition of the beneficial owner was included in the Law on Combatting Money Laundering and Terrorism Financing and complied with the FATF standard. Information about the beneficial owners was collected and published on the www.e-register.am, including in machine-readable format. In 2022, the full scope of information on the beneficial owners was available only for extractive sector companies. Information submitted on beneficial owners was not verified for accuracy and completeness, although the authorities checked the non-submission of information. No sanctions were applied for failing to submit or update information on beneficial ownership or submitting false information about beneficial ownership.

Benchmark 4.2.1.

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

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

The Law on State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs regulates the registration of companies in the State Unified Register of Legal

Persons, established under the Ministry of Justice and run by the State Register Agency of Legal Entities of Armenia. The information collected during registration includes information on beneficial owners. The definition of the beneficial owner is included in the Law on Combatting Money Laundering and Terrorism Financing. Beneficial owner of a legal entity (except for a trust or another legal arrangement without the status of a legal person under foreign law) means a natural person who: a. Directly or indirectly holds 20 and more per cent of the voting stocks (issued stocks, shares) of the given legal person, or has 20 and more per cent direct or indirect participation in the authorized capital of the legal person; b. Ultimately (de facto) exercises control over the given legal person through other means; c. Is an official carrying out the overall or routine management of the given legal person, in case no natural person complying with the requirements of Subpoints "a" and "b" of this Point is identified. The Government stated that no additional guidance existed on the element "ultimately" (de facto) exercising control because the Government did not want to restrict this element too much. In general, the definition appears to be in line with the FATF definition and, thus, compliant with **element A**.

In 2022, there was no requirement for *all* companies in Armenia to provide information on their beneficial ownership, as foreseen by **element B** of the benchmark. The relevant legislation provided for a phased introduction of the requirement. At first, as a pilot, only companies in the extractive industries were required to submit declarations on their beneficial owners in 2020. Then, a phased introduction of the requirement to submit declarations on beneficial ownership was implemented as set out below:

1. 1 September - 1 November 2021: organisations providing audio-visual media services (e.g. media companies including radio and TV stations and cable networks).
2. 1 January - 1 March 2022: commercial organisations registered in Armenia, except for limited liability companies with only participants who are natural persons.
3. 1 January - 1 March 2023: limited liability companies and non-commercial organisations with only participants who are natural persons.

According to the Government, companies are required to provide a state authority with up-to-date information about their beneficial owners, including at least the name of the beneficial owner, the month and year of birth of the beneficial owner, the country of residence and the nationality of the beneficial owner, the nature and extent of the beneficial interest held. The information on the beneficial owner is submitted within 40 days after the registration and within 40 days after the changes in the information on the beneficial owner; in addition, annually, the legal entity should confirm that the beneficial owner information is accurate and has not changed. The monitoring team could not verify this because – even though requested after the on-site, the monitoring team did not receive the actual provisions in relation to beneficial owner registration as set out in the Law on the "State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Individual Entrepreneurs."

As regards the practice (**element C**), information about beneficial owners is collected by filling out the declaration on the www.bo.e-register.am website. The head of the executive body of the legal entity, or the person authorized by him, enters the system and fills in the data about the beneficial owners. The submitted data is verified electronically within two working days and becomes available on the www.e-register.am website.[27] The Government informed that from September to December 2022, 1,279 declarations were submitted and registered through the electronic application system, and from January to April 2023, 45,989 declarations were received and registered.

[27] Examples of published beneficial ownership declarations: www.e-register.am/am/companies/1367358/declaration/29d64531-5b0f-45bd-b09d-5c7cbdd016a0, www.e-register.am/am/companies/1263700/declaration/04691dfc-a71d-4e80-8771-f24c47a124f6.

Benchmark 4.2.2.

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

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

Information about the beneficial owners is collected and published on the www.e-register.am. Besides, it is published in machine-readable format (JSON) and is searchable. Therefore, Armenia is compliant with **elements A and B**.

Through the information system without paying a state fee, the following are available from the Agency's official website: the name and surname of the legal entity's beneficial owner, the beneficial owner's citizenship, the date of becoming a beneficial owner, the grounds for being the beneficial owner of a legal entity. However, it seems that, in 2022, this information was only available concerning companies in the mining sector, which is not in line with the requirement of **element C**. The monitoring team understood that in 2023, information on beneficial ownership became available for all companies. This falls outside of the scope of this report's monitoring period but will be assessed in the next monitoring report.

Benchmark 4.2.3.

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

The Government's response has been ambiguous. According to the authorities, in 2022, 1,118 administrative proceedings were initiated, of which about 300 were terminated because the company submitted information on beneficial owners, while 818 proceedings were terminated because the statute of limitation for imposing an administrative penalty passed. A warning has been applied to 115 entities. There was one case in 2023 when, according to the application submitted by a mass media outlet, an administrative proceeding was initiated on the basis of incomplete submission of the declaration regarding the beneficial owners, and after the deficiencies were corrected, the administrative proceeding was terminated. However, the Government has also stated that in 2022, the information submitted on beneficial owners was not verified for accuracy and completeness. See also the next benchmark 4.2.4.

Benchmark 4.2.4.

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

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

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

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

Background

There was no Business Ombudsman institution in accordance with the benchmark in Armenia. Several non-profit organizations have attempted to provide advocacy and relief functions for the private sector, for example, through the Armenian Lawyers' Association platform (www.bizprotect.am). However, these efforts were uncoordinated and not successful. The Government refers to the Human Rights Defender and the Competition Protection Commission as the entities that can review and address business complaints, but these do not fall under the scope of the benchmark.

Assessment of compliance

As there was no Business Ombudsman type institution in Armenia in 2022, it was not compliant with the benchmarks of this indicator. The Human Rights Defender and the Competition Protection Commission could not be considered as such institutions, for they have a different mandate and scope of authority.

Benchmark 4.3.1.

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

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

The Human Rights Defender: Pursuant to the Constitutional Law on the Human Rights Defender, the Human Rights Defender ("HDR") is an ombudsman function which has the authority to consider violations of human rights and freedoms enshrined in the Constitution of Armenia. According to a representative of the HRD, the Department of Civil, Socio-Economic and Cultural Rights Protection deals with the protection of business rights. The HRD informed that business entities submitted 100 complaints to HRD in 2022, mostly focused on the State Revenue Committee of Armenia and utility companies. The HRD did not provide the annual report for 2022, so the monitoring team could not assess what type of complaints were received from business entities during the monitoring year. It seems that fundamental rights in the Constitution that would potentially apply to business entities would be the "freedom of economic activity and guaranteeing economic competition" and the "right to property."

According to the monitoring guide, the benchmark requires the government to appoint or establish in practice an entity that has a special mandate for receiving and following up on alleged violations of company rights by actions or omissions on the part of the state or municipal authorities…" and "[l]egislation should provide this institution with powers to conduct administrative investigations and to provide protection or other legal help, such as requiring a state body canceling decisions that infringed on company's interests, other actions restoring company's legitimate interests."

The HRD does not have a special mandate pursuant to the benchmark to receive complaints by business entities. Given its broad scope, it can consider complaints from business entities (if failing within the scope of the HRD's authority), but the focus of the HRD is on violations of human rights. Furthermore, the HRD – as also acknowledged by their representative to the monitoring team - acts as an intermediary between the relevant public authority and businesses. They do not have powers to conduct administrative investigations, nor can they provide protection to businesses.

According to the business community, the HRD is not a business ombuds institution: some businesses were not even aware of the HRD, while others stated that the HRD's business unit is very modest. According to the business community, they either resolve their issues with public authorities independently or hire lawyers, but they do not generally approach the HRD. The business community did mention that, in their opinion, there is a need for a business ombuds institution in Armenia and that, in the past, they had suggested developing the capacity of HRD in this respect.

The Competition Protection Commission: The authorities also indicated the Competition Protection Commission as an institution that, in their opinion, could be regarded as a business ombudsman type. The Competition Protection Commission is a state autonomous body supervising compliance with the Law on Protection of Economic Competition. It is an administrative body that can impose administrative fines. However, the Competition Protection Commission cannot be classified as a "dedicated institution - an out-

of-court mechanism to address complaints of companies related to violation of their rights by public authorities" under this benchmark because, as set out in the guide "reporting (complaint) channels in law-enforcement and anti-corruption bodies or administrative courts are not counted as designated institutions for receiving company complaints." Moreover, the Competition Protection Commission's mandate is limited to matters concerning competition protection legislation.

Thus, neither the Human Rights Defender nor the Competition Protection Commission comply with **element A** of the benchmark.

Regarding resources to fulfil the mandate in practice (**element B**), the HRD has stated that it has limited resources. Should it be decided to expand the scope of the HRD to provide them with a special mandate to deal with complaints from business entities, then the HRD should receive additional financial and human resources.

As concerns **element C** of the benchmark, it requires that "the institution conduct in practice a regular analysis of problems that local and international companies complain about in relation to the business environment, identify systemic solutions and prepare recommendations for the government in general or to sectoral ministries. There should be an official channel for these bodies to submit their recommendations to the government." The HRD shared one report with the monitoring team for 2022, which is insufficient to determine that there is regular analysis. In any case, the HRD is not considered as a qualifying dedicated institution under this Indicator.

Benchmark 4.3.2.

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

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

There was no dedicated institution in Armenia qualifying under this Indicator.

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

Background

Many SOEs in Armenia were privatised in the 1990s and early 2000s. As of 1 January 2022, there were 134 joint-stock companies with more than 50% state participation; their management powers were assigned to 23 authorized bodies, including eight ministries. The State Property Management Committee monitors all companies with state participation as well as organises the processes of privatisation and liquidation of companies, and at the same time, manages 14 companies under its authority. The management of the remaining companies is carried out by the relevant government agencies and departments. The largest central government-owned SOEs are in the electricity generation sector and the water supply, sewage, waste management, health, post, television, and radio sectors.

The authorities selected the following five SOEs for the assessment under this indicator:

1. "Armenian Nuclear Power Plant" (ANPP) Close Joint Stock Company (CJSC) (total assets exceed $ 100 million)
2. "High Voltage Electric Networks" (HVEN) CJSC (total assets exceed $ 100 million)
3. "Yerevan Thermal Power Plant" (TPP) CJSC (total assets exceed $ 100 million)
4. "Jrar" CJSC (total assets exceed $ 100 million)
5. "Surb Grigor Lusavorich Medical Center" (SGLMC) CJSC (> 500 employees).

Assessment of compliance

The level of corporate governance in the SOEs selected for assessment was low. Very few companies complied with some elements of the benchmarks. Only in one company, at least one-third of its board comprised independent members. Several elements were not applicable because no appointment of CEO or board members took place in 2022 in several companies. There was little information about internal integrity systems in the selected SOEs. The monitoring team considers that building robust anti-corruption compliance systems and developing corporate governance in state-owned enterprises in line with international standards should be included in the government priorities in Armenia.

Benchmark 4.4.1.

Supervisory boards in the five largest SOEs:

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Are established through a transparent procedure based on merit, which involves online publication of vacancies and is open to all eligible candidates	X	N/A	X	N/A	N/A
B. Include a minimum of one-third of independent members	X	X	✓	N/A	N/A

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

In Armenia, for the SOEs that have been evaluated, two SOEs (ANPP, Yerevan TPP) were not compliant for lack of information provided by the authorities, and for three other SOEs, the element was not applicable because they had no board members at all or no board appointments in 2022.

The assessment of the compliance with **element A** by each SOE is the following:

SOE	Assessment

ANPP	It seems that one board appointment took place in 2022. No further information was provided to the monitoring team to be able to assess if the appointment was based on merit after a transparent procedure.
HVEN	No board appointments took place in 2022.
Yerevan TPP	There were three appointments in 2022. No further information was provided to the monitoring team to be able to assess if the appointment was based on merit after a transparent procedure.
Jrar	There are no board members.
SGLMC	There are no board members.

As regards the requirement of **element B** on a minimum of one-third of independent members, one SOE (Yerevan TPP) was compliant in 2022 because two out of six board members were independent members, according to the Government information. Two SOEs (ANPP, HVENN) were not compliant for the lack of sufficient information showing compliance. And for two other SOEs, the element was not applicable because they had no board members.

The assessment of compliance with **element B** by each SOE is the following:

SOE	Assessment
ANPP	From the response provided, it seems that ANPP has five board members: two board members represent Ministries, while two board members represent academia, and one board member is from a research institute. It has not been clarified which board members are independent.
HVEN	The response states that there are six board members; four board members are independent and not involved in the current management of the company. The response does not clarify who the independent board members are and what are their functions/roles, so the information could not be verified by the monitoring team.
Yerevan TPP	The responses indicate that two of six board members are independent.
Jrar	There are no board members.
SGLMC	There are no board members.

Benchmark 4.4.2.

CEOs in the five largest SOEs:

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Are appointed through a transparent procedure which involves online publication of vacancies and is open to all eligible candidates	N/A	X	N/A	N/A	N/A
B. Are selected based on the assessment of their merits (experience, skills, integrity	N/A	X	N/A	N/A	N/A

According to the assessment methodology, this benchmark is not applicable to SOEs where no CEO appointments were made during the reporting year. In 2022, **element A**, requiring conducting appointments through a transparent procedure, was not applicable for four SOEs because no CEO appointments took place in 2022. One SOE (HVEN) was not compliant for the lack of information provided by the Government to show compliance. The same conclusions are valid for **element B**.

The assessment of compliance with element A and B by each SOE is the following:

SOE	Assessment
ANPP	No CEO appointment took place in 2022.
HVEN	The response did not clarify if the General Director was appointed in 2022. The monitoring team did not receive sufficient information to assess if the appointment was based on merit after a transparent procedure.
Yerevan TPP	No CEO appointment took place in 2022.
Jrar	No CEO appointment took place in 2022.
SGLMC	No CEO appointment took place in 2022.

Benchmark 4.4.3.

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

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. A compliance programme that addresses SOE integrity and prevention of corruption	X	X	X	X	X
B. Risk-assessment covering corruption	X	X	X	X	X

The authorities did not provide information that confirms compliance with **elements A and B** of the benchmark for all SOEs, namely information showing that the respective companies have established a compliance programme addressing integrity and corruption prevention and risk assessment framework covering corruption.

Benchmark 4.4.4.

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

Element	Compliance				
	ANPP	HVEN	Yerevan TPP	Jrar	SGLMC
A. Rules on gifts and hospitality	X	X	X	X	X
B. Rules on prevention and management of conflict of interest	X	X	X	X	X
C. Charity donations, sponsorship, political contributions	X	X	X	X	X
D. Due diligence of business partners	X	X	X	X	X
E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme	X	X	X	X	X

For all **elements (A-E)** of this benchmark that concern anti-corruption compliance programmes, all five SOEs were not compliant in 2022 because relevant elements either were not implemented, or information was not provided to the monitoring team.

The assessment of the compliance with all elements by each SOE is the following:

Elements/SOEs	Explanation
ANPP:	
Element A	According to the provided information, hospitality is held in accordance with the Procedure approved by the order of CEO. However, no copy of the order was provided, so this could not be verified by the monitoring team.
Element B	From the information provided, it is not clear whether ANPP's anti-corruption compliance program contains rules or procedures on the prevention and management of conflict of interest. The response only refers to the law on Procurement" regarding procurement, Decision of the Government of the Republic of Armenia 526–N dated May 4, 2017. No further information has been provided.
Element C	According to the response, no rules have been implemented in this respect.
Element D	From the information provided, it is not clear whether ANPP's anti-corruption compliance program contains rules or procedures on conducting due diligence of business partners. The response only states that reliability is checked in accordance with the Decision of the Government of the Republic of Armenia No. 744-N dated 9 June 2005. No further information has been provided.
Element E	No information was provided.
HVEN:	
	The monitoring team could not assess compliance because no information was provided.
Yerevan TPP:	
Elements A-E	The monitoring team could not assess compliance because no information was provided.
Jrar:	
Elements A-E	The monitoring team could not assess compliance because insufficient information was provided. According to the response, Jrar's compliance program is at the final stage, but no further information on the program was provided.
SGLMC:	
Elements A-E	The monitoring team could not assess compliance because no information was provided.

Benchmark 4.4.5.

The five largest SOEs disclose via their websites:

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

For **element A** concerning the online disclosure of financial and operating results of SOEs, three out of five companies were compliant in 2022 by publishing relevant information. As to publishing all other information required in **elements B-E**, all five companies were not compliant in 2022 (except for publication on the amount of remuneration of board members, where it was not applicable to Jrar, which did not have a board and not applicable to ANPP and HVEN where board members did not receive remuneration).

The assessment of the compliance with all elements by each SOE is the following:

SOE / Elements	Explanation
ANPP:	
Element A	The annual financial statement for 2022 was published on the website - www.armeniannpp.am
Element B	The response provided by the authorities states that information is published on the website www.gnumner.am, but no specific link to the webpage with such information was provided
Element C	The response states that the board members are not paid.
Elements D - E	No information was provided to confirm compliance.
HVEN:	
Element A	The annual financial statement for 2022 was published on its website: www.hven.am.
Element B	The response states that information is published on the websites www.armeps.am and www.gnumner.am, but no specific link to the webpage with such information was provided.
Element C	According to the response, the remuneration of the Board members is not defined. The salaries of the Company's employees are reflected in the annual financial and economic activity report of the Company, which is published.
Elements D - E	No information was provided to confirm compliance.
Yerevan TPP:	
Element A	The Annual report 2022 is published on the website (in English and Armenian) - https://ytpc.am/images/reports/AuditReport2022ENG.PDF and https://ytpc.am/images/reports/AuditReport2022ARM.PDF.
Elements B - E	No information was provided to confirm compliance.
Jrar:	
Element A	Jrar has no website
Element B	The response states that information is published on the website - www.gnumner.am, but no specific link to the webpage with such information was provided.
Element C - D	Jrar has no Board; thus, these elements are not applicable.
Element E	No information was provided to confirm compliance.
SGLMC:	

Elements A-E	No information was provided to confirm compliance.

Box 4.1. Methodology for assessing corruption risks in SOEs

The Government informed that in 2023, the Corruption Prevention Commission developed a methodology for assessing corruption risks in SOEs within the scope of the 4th component of the EU Twinning Programme “Promoting Integrity and Preventing Corruption in the Armenian Public Sector”. The methodology is based on a similar methodology for assessing corruption risks of the State of Rhineland-Palatinate of the German Federation, OECD guidelines, as well as the experience of the Republic of Latvia.

After the development of the methodology, in the Spring of 2023, in co-operation with the German experts in Armenia, it was implemented as a pilot programme in three SOEs: "Armenia National Interests Fund" CJSC (ANIF), "Hayantar" State Non-Commercial Organisation, and "Kindergarten No 119 of Yerevan" Community Non-Commercial Organisation.

During the first phase of the pilot, the concept paper for corruption risk management was introduced to the participating organisations, who also received instructions on the completion of a risk matrix. Following question and answer sessions, the organisations were given time to complete the risk matrices. The next step in this pilot was an in-depth assessment of the SOEs' risk processes. With further support from the Corruption Prevention Commission and international experts, it is envisaged to conduct assessments of the three organisations by the end of 2023. Afterward, tailored-made action plans will be developed, including further preventive measures.

Assessment of non-governmental stakeholders

Non-governmental stakeholders mentioned Armenia’s strive to register and publish beneficial ownership information of companies. They were positive about the progress but mentioned that there had been technical issues for companies to register beneficial ownership during the phased implementation of the mandatory requirement (as described in benchmark 4.2.1 above). The non-governmental stakeholders noted that there is a lack of information and recommended the government raise more awareness so that companies know they are required to provide information and understand why they are required to do it. The non-governmental stakeholders advised implementing a pro-active verification mechanism at the State Registry because, currently, it is a very reactive system: checks occur when it is raised that false information may have been provided.

Non-governmental stakeholders recommended for increased transparency of SOEs and to extend to them integrity regulations that are equivalent to those applicable to the public sector employees in Armenia. The stakeholders noted the need to strengthen the corporate governance culture in Armenia because there are currently gaps and deficiencies. Another observation was that measures to improve the integrity of governance structure and operations of SOEs will be more fruitful within a strong corporate governance culture environment. The stakeholders were also concerned that the financial reports of the SOEs were not publicly available or were hard to access (the Armenian National Interest Fund was mentioned as an example).

5 Integrity in public procurement

Armenia had a well-established legal framework for public procurement, which was supported by an e-procurement platform with open eligibility and broad coverage of the entire procurement cycle, including the contract implementation phase. The system aligned with international best practices and principles of transparency, fairness, and accountability and offers a range of procurement methods. The choice of method depended on the estimated value, complexity, and nature of the procurement. The system defined monetary thresholds that determine the procurement procedures to be followed. Below the thresholds, simplified procedures were applied, while above the thresholds, more comprehensive procedures were implemented, ensuring competitive and fair procurement processes. The national e-procurement system (ARMEPS) allowed for the publication of procurement plans, online registration, submission of proposals, evaluation, and contract management. While the Armenian public procurement system made significant strides in promoting transparency and efficiency, several challenges remained. These include the need to enhance the effectiveness of oversight mechanisms, address potential conflicts of interest, strengthen anti-corruption measures, and further streamline procurement processes.

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

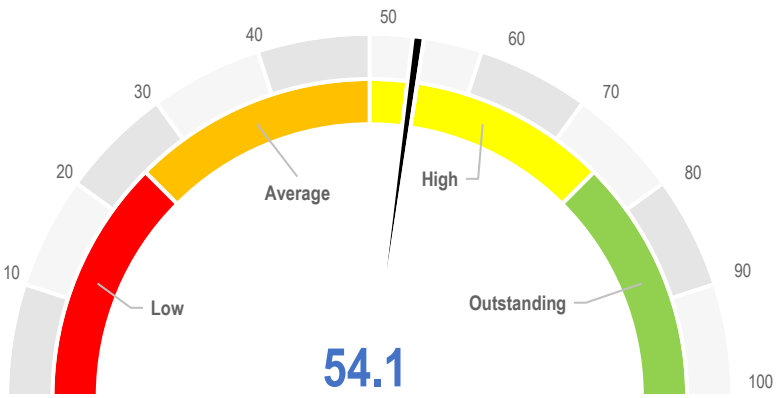
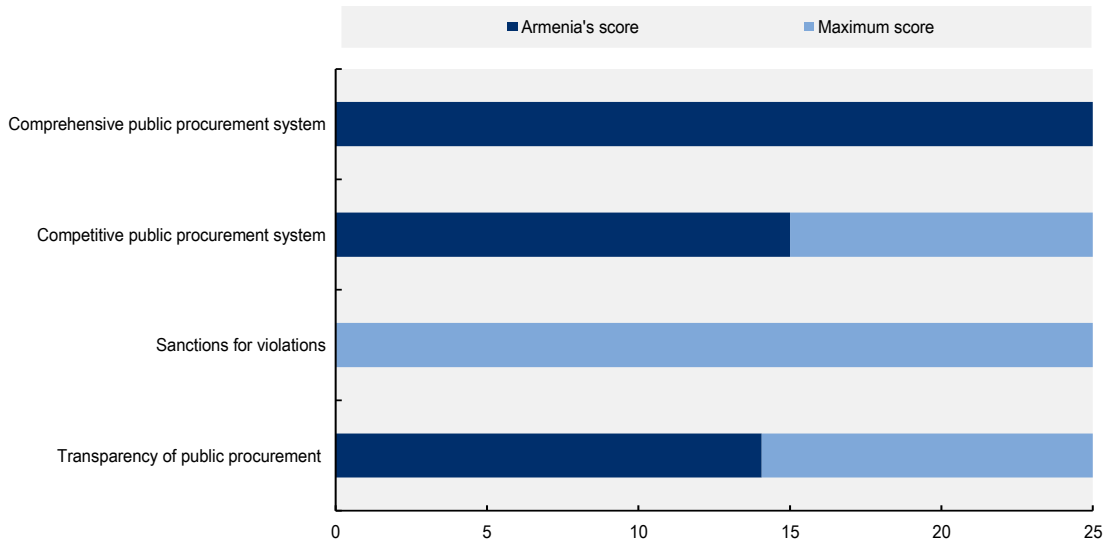


Figure 5.2. Performance level for Integrity in Public Procurement by indicators



Indicator 5.1. The public procurement system is comprehensive

Background

Public procurement in Armenia is regulated by the Law on Procurement of Armenia (LPA), adopted in 2016.

Assessment of compliance

The LPA establishes a comprehensive legal framework for the procurement of works, goods, and services, including consulting services. LPA is aligned with the Agreement on Government Procurement of the World

Trade Organization (WTO GPA), which Armenia is a party to. Since acceding to the GPA, Armenia has continued to refine procurement legislation.

Benchmark 5.1.1.

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

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

The well-established legal framework covers procurement by publicly owned enterprises, including SOEs and municipality owned enterprises and non-classified areas of the defence sector (via LPA and the related secondary legislation), as well as utilities and natural monopolies (through a special Governmental Decree); thus, it is generally in line with all three **elements A-C.**

Article 2 of the LPA provides a detailed definition of contracting authorities subject to law with comprehensive coverage and application in respect of areas of economic activities concerning public interest. It covers, inter alia, public administration and local self-government bodies, state or community institutions, and non-commercial organizations, including those with more than 50% of state or community shares, as well as public organizations from the list approved by the Public Services Regulatory Commission of Armenia (PSRC). The PSRC governs the activities of entities operating in the regulated field of public services, with the exception of persons holding a dominant position in respect of services provided through public networks operation providing certain sector-specific public services based on special or exclusive rights.

Besides, procurement by the utilities and natural monopolies is excluded from the direct application of LPA. They fall under special procurement regulations by the PSRC and are additionally governed by Government Decrees (the latest related Decrees in force are No 526-N of 2017 and No 273-A of 2020). It is understood that procurement by utilities and natural monopolies is regulated by the procurement procedures approved by these organisations, and these procedures shall not contradict the objectives and principles of LPA (LPA Article 52) and are subject to a general appeal procedure provided for in LPA. It shall be noted that the monitoring team has not assessed the coverage of specific regulations of the specific utilities and natural monopolies. The assessment is based on the presentation by the authorities that all such organizations have comprehensive coverage in line with LPA and provide for competitive and transparent procurement arrangements.

The public procurement legal framework includes defence and security-related acquisitions under the LPA, even when procurement contains state secrets.

Benchmark 5.1.2.

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

LPA Article 23 provides a comprehensive and unambiguous description of limited options for exemption from a competitive procedure. Governmental Decree No. 526-N of 2017 further specifies the conditions and procedures related to these exceptions.

At the same time, the number and total value of the contracts awarded directly (52,450 contracts in the amount of AMD 165,934 million) and signed in 2022 represented 46% of the number of all contracts (113,054) and 42% of their total value (AMD 390,593 million), which suggests that the limited exemptions of the law are often mistreated (It shall be noted that the above figures include the data on health service budget allocations; see benchmark 5.2.1. for more details).

Benchmark 5.1.3.

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

LPA Article 7 sets a clear rule for equal participation for all (local and foreign legal or natural persons) in a public procurement process. Armenia is a signee to the WTO GPA, and therefore, public procurement is broadly open to a large group of countries. Participation in a public procurement process can be limited only by a government decree, if necessary, for national security and defence. The geopolitical situation has a big impact on foreign participation (Turkish and Azerbaijani companies do not bid in Armenia, Iranian companies have a very limited presence trade with the EU, and EAEU companies have serious logistic constraints, using routes via Georgia only and no railway links).

A large volume of procurement information is available in the Armenian language only, according to LPA Article 14, but a part of the information is also published in English and Russian.

Statistical data for 2022 illustrates the openness of the public procurement system in Armenia. In the assessment period, foreign legal persons participated in 291 procurement procedures with a value of AMD 22,278 million. As a result, 130 contracts (0.25% of the total number) with a total value of AMD 4,363 million (1.1% of the total value) were awarded to non-resident participants. The relatively low foreign companies' participation may be related to the geographical location of the country, geopolitical situations in the region and use of the official national language rather than legal or administrative restrictions of the procurement system.

Indicator 5.2. The public procurement system is competitive

Background

The annual procurement data is published annually by the Ministry of Finance. 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, etc.

Assessment of compliance

Armenian authorities managed to ensure a high level of competition on a number of competitive procedures, with the urgent open competitions securing 3.4 proposals per process on average, whilst the regular open competition secures reasonable 2.2 proposals per procedure. However, there was a substantial number of less competitive processes used, especially inquiry for quotations, where a much higher level of competition is easily achievable. The share of single-source contracts of all public sector contracts appears to be unreasonably high.

Benchmark 5.2.1.

Direct (single-source) contracting represents:

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

In 2022, contracts awarded directly in the amount of AMD 165,934 million represented 42% of the total procurement value. However, the authorities informed that due to statistical reasons, the above figures include budget allocations for health services provided to citizens of Armenia, in the amount of AMD 92,810 million. These budget allocations cannot be classified as public procurement per se. Therefore, for the purposes of the assessment, the direct contracting value has been adjusted, so in 2022, the value of the directly awarded contracts (AMD 73,124 million) represented 25% of the total procurement value (similarly adjusted) of AMD 297,783 million.

Benchmark 5.2.2.

The average number of proposals per call for tender is:

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

Based on the statistical data for 2022 (135,496 proposals submitted under 71,344 competitive procurement processes), the average number of proposals per competitive procedure was 1.9. The participation rate varies from 1.8 for price quotations (which appears to be very low for this procurement procedure) to 3.4 for so-called ''urgent open tender.'' If only the open tenders (including multi-stage processes) data are assessed, the average participation rate would be as high as 2.5.

Benchmark 5.2.3.

The threshold value for goods contracts:

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

LPA Article 2 establishes the thresholds (procurement base unit) for small value acquisition of goods, works, and services in the amount of 1,000,000 AMD (about EUR 2,230, as per the exchange rate of 31 December 2022). The total value of the contracts under the threshold placed in 2022 was AMD 485.3 million.

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

Background

Procurement regulations on conflict of interest in public procurement are covered by the LPA. The regulatory framework also includes the Government Decision No 526-N and the Law on Public Service, which provides a general framework applicable to all civil servants.

Assessment of compliance

The Armenian public procurement system has only basic provisions to reduce the risk of nepotism and corruption in public procurement. The relatively recent positive development is the focus on the identification of beneficiary ownership of the participants in procurement processes, which is intended to reduce the above-cited risks. In terms of enforcement, no sanctions were imposed for corruption offenses in public procurement in 2022. The requirement to debar natural persons from the award of public sector contracts in case of conviction for corruption offences was in place, although direct contracting arrangements and under threshold procurement are not covered. The responsibility of legal persons was enacted on 1 January 2023, and thus, debarment rules did not apply to legal persons in the assessment period.

Benchmark 5.3.1.

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

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

The legislation does not seem to establish a comprehensive legal framework for preventing and regulating COI for all actors involved across all stages of procurement. LPA limits the conflict of interest to people involved in the evaluation of proposals and review of appeals (LPA Articles 33 and 49). The regulatory framework in this respect also includes Government Decision No 526-N and the Law on Public Service, which provides a general framework applicable to civil servants.

As noted earlier in the Report (see benchmarks 2.1.1 - 2.1.4), during the assessment period in 2022, Article 33 of the LPS was not aligned with international standards in terms of the definition of a COI and private interests, methods for resolving COI.

On the procurement side, the legal framework does not seem to recognize different forms of conflict of interest, which may arise at different phases of a procurement process and during the implementation of a resulting contract at the level of different actors, both within and outside of the procuring body. The procurement system does not seem to have an effective mechanism to verify the beneficial ownership of the participants in the competitive procurement process or the party to which a contract is awarded. Although a direct contracting procurement process represents the basis for a substantial part of the public procurement contracts and is widely open to corruption and nepotism risks, it does not seem to envisage verification of beneficial ownership either. Besides, no sanctions for violations of COI in public procurement were imposed in 2022. Thus, the country is not compliant with **elements A and B**.

Beyond a very limited discussion on a potential conflict of interest by participants in LPA Article 7, the involvement of affiliates at different phases of the procurement process does not appear to be well defined, as required by **element C** of the benchmark. No effective control mechanism seems to exist.

At the same time, under a broader regulatory framework, the Competition Protection Commission is involved in the investigation of bid rigging and anti-competitive behaviour in public procurement. In 2022, six proceedings were initiated, and two decisions were made on violation of competition when (i) connected suppliers (foreign company and its local affiliate) participated in the procurement and attempted a bid rigging, and (ii) eight companies coordinated their participation in tenders by Municipality of Yerevan in the form of bid rigging with an attempt to a long term market division and obtaining public contracts in turn, creating artificial price competition. Three other cases involved targeted specifications by public authorities with no conclusive evidence. The Commission also reviewed eleven public procurement cases and made a decision that entailed follow-up legal actions, including one case under which criminal proceedings were initiated.

Benchmark 5.3.2.

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

No sanctions were imposed for corruption offenses in public procurement in 2022.

In 2022, the State Control Service (a supervision body under the Prime Minister) studied the legality and efficiency of the acquisition and use of oil products by the Ministry of Defence and, as a result, initiated criminal proceedings. In addition, the Acting Military Prosecutor presented a report on the cases of alleged crimes committed by the officials of the Ministry of Defence related to procurement, namely theft by an organized group with the use of fraudulent practices. Based on the information provided, the Anti-Corruption Committee initiated criminal proceedings. None of the above-mentioned criminal proceedings have been completed during the assessed period.

The non-governmental representatives noted that in the annual report on the corruption crime investigation published by the Office of the Prosecutor General of Armenia, the respective statistics were provided with reference to a specific article of the Criminal Code. As the Code did not include a specific article on corruption related to public procurement, the statistics on corruption crimes in procurement were not explicitly revealed in the report.

Benchmark 5.3.3.

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

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

According to LPA Article 6 (paragraph 3, Part 1), a person or a representative of an executive body is not eligible to participate in procurement in case they were convicted (within five years prior to submission of a proposal) for receiving a bribe, giving a bribe or mediation in bribery and crimes against economic activity provided for by law. It shall be noted that the provision does not seem to be harmonised with the definition of corruption crimes of the Criminal Code of Armenia and provides for narrower coverage. Moreover, the cited provisions do not seem to cover direct contracting arrangements and under threshold procurement, as the provisions explicitly refer to the submission of a proposal, which is not always the case with such types of procurement. In 2022, a list of natural persons debarred from (ineligible for) public procurement did not include any persons debarred from participation based on a conviction for corruption offenses (see benchmark 5.3.4.). Considering this, the country is not compliant with **element A**.

Regarding the responsibility of legal persons, it was introduced to the Criminal Code in July 2022 and enacted on 1 January 2023; thus, the new provisions fall outside the assessment period. In accordance with the assessment methodology and the Guide, if the country's law does not establish liability of legal persons for corruption offences, compliance with **element B** is not assessed (assessment of the framework on the liability of legal persons is covered by PA9, Indicator 2).

Benchmark 5.3.4.

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

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

The authorities did not provide information to demonstrate compliance with the requirement on the debarment of at least one natural person convicted for corruption offences (**element A**). In terms of responsibility of legal persons (**element B**), as noted above, it was introduced to the Criminal Code in July 2022 and enacted on 1 January 2023; thus, it falls outside the assessment period. The element is considered not applicable (assessment of the framework on liability of legal persons is covered by PA9, Indicator 2).

Indicator 5.4. Public procurement is transparent

Background

The e-procurement platform - ARMEPS is widely used, and a large part of the contracting authorities are connected to the system. A procedure for conducting e-procurement through an open tender is established by Government Decree No 386.

Assessment of compliance

Armenian authorities have been using and permanently enhancing its e-procurement platform and data disclosure, covering the entire investment cycle from planning through selection to contract completion, ensuring a substantial degree of transparency. However, procurement data was not available in a machine-readable format in the assessment period. Besides, while a large number of contracting authorities are connected to the system, the electronic procedures were not mandatory for all contracting entities.

Benchmark 5.4.1.

An electronic procurement system, including all procurement methods:

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

According to LPA Article 8, within the scope of the functions defined by the law, communication between procuring entities and economic operators can be carried out electronically, and the announcement and invitation may be provided electronically. Government Decree No 386 establishes a procedure for conducting e-procurement through an open tender, except for tender carried out in two stages, procurement through price quotation and direct awards in case of emergency. Therefore, electronic

procedures are an option, not an obligation, leading to the assessment of **element A** as non-compliant. However, the e-procurement system ARMEPS (www.armeps.am) is widely used, with a large part of the contracting authorities connected to ARMEPS. The aforementioned Governmental Decree lists contracting entities that shall carry out procurement via the platform. This list does not cover all entities defined by LPA.

In terms of accessibility (**element B**), ARMEPS is accessible to all interested parties and allows a free and simple registration with relevant documents and video tutorials. As of 2022, more than 20,120 private entities were registered in the system. The system has an interface in three languages (Armenian, Russian, and English). Procuring entities may also register with the system without any difficulties. The procurement information is published on the following websites: www.armeps.am, www.procurement.am and www.eauction.armeps.am.

Benchmark 5.4.2.

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

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

The functionalities of ARMEPS encompass all key procurement stages, including publishing notices, making tender documents available, receiving tenders, and recording all aspects of the proceedings, as well as providing key information on contract implementation.

Thus, the system complies with three **(A, B and D) elements** of the benchmark. All procurement plans are published by the contracting authorities on the unified platform of the Ministry of Finance www.procurement.am and www.armeps.am. Announcements of procurement procedures, publication of procurement documents, and minutes of evaluation committees' sessions, as well as contact awards, including direct contracting, are also made through the platforms. Key information on the implementation of contracts, including the complete text of signed contracts, their modifications, completion certificates, and invoices, are exchanged via the mentioned platforms, too. The procurement appeal process (**element C**) is not digitalized.

An e-auction module has been operational since 2018. Irrespective of the use of other ARMEPS facilities, notices and tender documents from all contracting authorities are available on the Ministry of Finance website.

Benchmark 5.4.3.

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

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

All procurement plans are published by the contracting authorities on the unified platform of the Ministry of Finance www.procurement.am and www.armeps.am. Besides, announcements of procurement procedures and procurement documents, minutes of evaluation committees' meetings and decisions on contract awards, including information on the final contract price, are published on the platforms. These publications also cover contracts signed via the direct contracting procedure. Key information on the implementation of contracts, including the complete text of signed contracts, their modifications, completion certificates, and invoices, is publicly available (**elements A-B and D-E**).

As appeals and results of their reviews are concerned (**element C**), they are published and available free of charge to any interested party on the Official Bulletin of Procurement (www.procurement.minfin.am/hy/page/boghoqarkum), which includes data for 2017-2022.

Benchmark 5.4.4.

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

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

Procurement data listed in **elements A-E** are not available in a machine-readable format. Where information is published, it is usually available for reading and downloading in Excel, Word, or PDF formats.

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

Armenia created a procurement system largely aligned with fundamental international standards allowing for truly open procurement opportunities for legal and natural persons from any country in the world, being the first to simultaneously accommodate requirements of both global (WTO GPA) and large regional (EAEU) trading agreements. The dataset and information provided, as well as a search mechanism used, show a well-functioning public disclosure system. Since 2012, Armenia has been using and permanently modernizing its e-procurement platform, which focuses not only on selection processes but also on the contract implementation phase, safeguarding a substantial degree of transparency. In 2021, to increase the transparency of public procurement and accountability of winning tenderers, an innovative procedure was introduced to provide for the participation of representatives of the unsuccessful tenderers, public organizations, and media in acceptance of outputs of public contracts valued above AMD 1 million. These actors are given an opportunity to verify the conformity of the outputs vis-à-vis the requirements of the contracts and original proposals.

Assessment of non-governmental stakeholders

During the onsite visit, CSOs expressed a number of concerns regarding corruption-related risks in the public procurement system. Main of them are focused on 1) disproportionately broad use of non-competitive, restrictive and unregulated procurement methods for award of public contracts (so called, ‘’non-purchase expense’’, reportedly defined in Government Decree 706-N); 2) limited regulations and lack of effective control over procurement by public organisations regulated by the Public Services Regulatory Commission outside of the detailed framework of LPA (except of those privately owned); 3) allegedly widely spread nepotism (with conflict of interest not effectively controlled), especially at regional level; 4) use of targeted specification and requirements to be met by only one specific participant, under umbrella of competitive processes; 5) undue use of formal reasons for rejection of offers providing for good value for money in favour of preferred participants; 6) unreliability of information published in e-procurement portals due to lack of effective quality control mechanism; 7) weak contract management capacity and overall risk awareness by procuring agencies; and 8) incomplete and unreliable procurement plans, which are subject to frequent and uncontrolled modifications to procurement plans. Many of the allegations and concerns are supported by the provided official statistics and anecdotal evidence.

6 Independence of judiciary

Armenia has started reforming its judiciary to ensure its independence, integrity and accountability in line with international standards, but further deep reforms are required. Judges have life tenure. The Supreme Judicial Council and three other judicial institutions operate as judicial governance bodies in charge of the judicial career, evaluation, training, and discipline. During the evaluation period of 2022, their composition mostly complied with the monitoring benchmarks, except for the training commission and ethics and disciplinary commission, in which the civil society representation should be increased. Armenia should also consider measures to avoid the politization of appointments of judges and members of the judicial governance bodies, for example, by prohibiting former political officials to be selected in these positions during a certain period. In 2022, judges were selected and promoted through competitive procedures, but the merit-based evaluation system should be further strengthened. The law did not provide for the publication of integrity checks conclusions of the Corruption Prevention Commission; the report recommends that such conclusions should have more impact on the judicial selection decisions. There was an insufficient number of judges to match the high workload. Judges had no judicial recourse to contest disciplinary sanctions against them. The salary of judicial staff was very low, creating integrity risks.

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

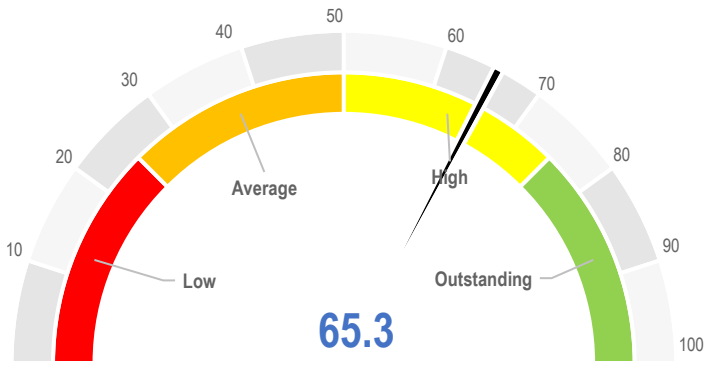
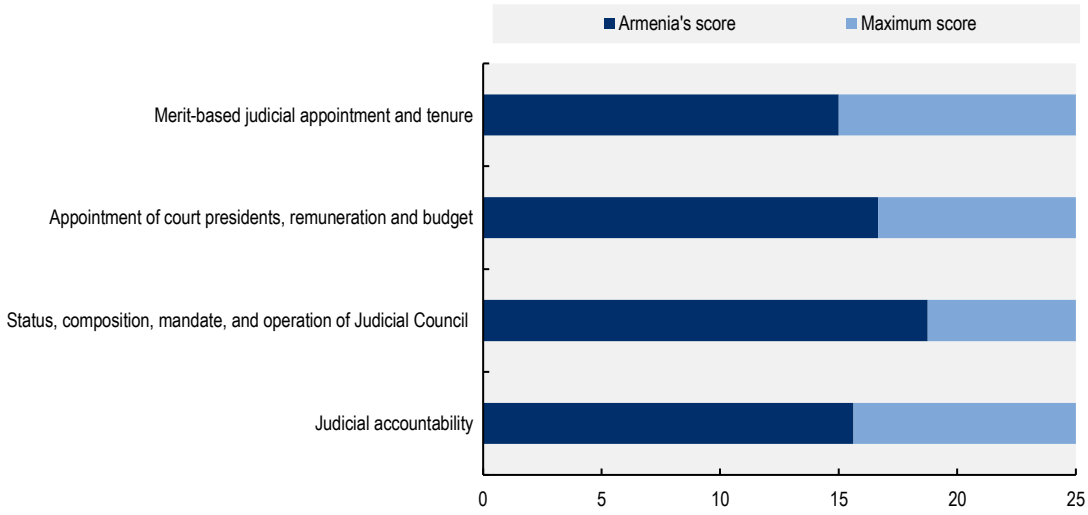


Figure 6.2. Performance level for Independence of Judiciary by indicators



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

Background

The judicial system and status of judges in Armenia are regulated by the Constitution and the Constitutional Law "Judicial Code." Judges hold office until attaining the retirement age of sixty-five. There is no initial (probationary) appointment of judges of any court in Armenia. Judges of the Court of Cassation are appointed by the President of the Republic following a nomination made by the National Assembly (parliament) by at least 3/5 of votes of the total number of Deputies from among candidates proposed by

the Supreme Judicial Council. The President of the Republic appoints judges of the first instance courts and courts of appeal upon recommendation of the Supreme Judicial Council.

Assessment of compliance

A constitutional body - the Supreme Judicial Council (SJC) – played a prominent role in the judicial career; the involvement of political bodies had been significantly reduced overall but remained essential in appointing judges. While the President appointed judges of the first instance and appeal courts, the Judicial Code did not include any grounds based on which the President might reject the proposed candidate. There were no such grounds for rejecting candidates for the Cassation Court when the nominations were considered by the parliament. The SJC's candidate recommendations did not include a justification. Judicial vacancies were advertised online, and any eligible candidate could apply, but the monitoring team found that the selection and promotion of judges were not based on merits. As to the dismissal of judges, the powers of a judge were terminated directly by the Supreme Judicial Council without any involvement of the political bodies.

Benchmark 6.1.1.

Irremovability of judges is guaranteed:

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

According to the Constitution of the Republic of Armenia (Article 166), judges hold office until attaining the age of sixty-five. There is no initial (probationary) appointment of judges of any court in Armenia. The country is compliant with **element A**. There is no procedure for confirming judges in office after the initial appointment because all judges are appointed until the legal retirement age.

Benchmark 6.1.2.

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

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

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

The Supreme Judicial Council (SJC) of Armenia qualifies as a judicial governance body under this and other indicators of this PA, as it is set up by the Constitution, is institutionally independent from the executive and legislative branches of government, Chairperson of the Supreme Court and court administration, has a mandate defined by the law, and manages its own budget. There is a different procedure for selecting and appointing judges of the first instance courts, appeals courts, and the Court of Cassation. The procedure is set by the Constitution and the Constitutional Law "Judicial Code." Judges of the Court of Cassation are appointed by the President of the Republic following a nomination made by the National Assembly (parliament) by at least 3/5 of votes of the total number of Deputies from among three candidates nominated by the Supreme Judicial Council for each seat of a judge. The vote for the Cassation Court judicial candidates in the National Assembly is secret and does not provide any justification. Judges of the first instance courts and courts of appeal are appointed by the President of the Republic upon recommendation of the Supreme Judicial Council.

According to the Judicial Code, when appointing judges to the first instance court or the court of appeal, the SJC proposes a candidate to the President, who shall adopt a decree on appointing the proposed candidate or return to the SJC the proposal with the objections. The Judicial Code does not include any grounds based on which the President may reject the proposed candidate. In 2022, the President of the Republic of Armenia rejected the SJC's proposal for a judicial candidate twice.

For the judges of the Cassation Court, the SJC proposes three candidates for each vacant position. The consideration of the candidates in the parliament is regulated by the Constitutional Law "On the Rules of Procedure of the National Assembly", which does not include grounds for rejecting candidates proposed by the SJC to the parliament, nor does it define grounds on which the President of the Republic may reject the candidate elected by the parliament.

As noted above, the Judicial Council does not directly appoint judges and, therefore, does not comply with **element A**. Besides, the Judicial Code does not provide grounds on which the President of the Republic may reject judicial candidates proposed by the SJC for the first instance and appellate court judges as it is foreseen by **element B** of the benchmark. There is also no proof that the rejection decision includes an explanation for its reasons. The same concerns the procedure for the appointment of the Cassation Court judges. In practice, the candidates are rejected because of non-compliance with the legal requirements or

violation of the selection procedure, but these grounds are not provided in the legislation and are too general. The monitoring team found out about cases when the President rejected the candidates because of concerns about their integrity (including based on the conclusions of the Corruption Prevention Commission), which is a positive practice; however, to limit the potential abuse of this power to reject the candidates, respective grounds should be clearly stated in the legislation.

The SJC reviews all candidates for the judicial office, but the analysis of the respective SJC decisions shows that its recommendations made to the relevant decision-making body (Parliament or President, depending on the level of judicial office) were not justified or, in other words, not explained. Therefore, **element C** is non-compliant either.

Benchmark 6.1.3.

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

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

According to the Constitution and the Judicial Code, the powers of a judge are terminated directly by the Supreme Judicial Council without the involvement of the political bodies. Armenia is compliant with **element A**.

Grounds for terminating the powers of a judge are set in the Judicial Code (Article 159) and include the following: violating the incompatibility requirements; committing a significant ("essential") disciplinary violation; engaging in political activities; failure due to temporary incapacity, to perform official duties for more than four consecutive months, or for more than six months during a calendar year, except for the reason of being on maternity leave, leave in case of birth of a child or adoption of a child; physical impairment or disease as a result of which the judge is unable to exercise the judicial powers, or if a judge refused to undergo the mandatory medical examination. Powers of the judge are also discontinued in the following situations: resignation; attaining the age of 65; judgment of a civil court on declaring as having no active legal capacity, missing or dead has entered into legal force; the criminal judgment of conviction has entered into legal force or the criminal prosecution has been terminated on a non-acquittal ground; loss of citizenship of the Republic of Armenia or acquiring the citizenship of another State; death.

Benchmark 6.1.4.

Judges are selected:

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

In Armenia, the candidates for judicial positions are first selected into a pool of candidates (candidates do not compete for a particular position in a particular court) from which the final selection is conducted when a vacancy appears. As noted in the Guide to the benchmark, if the country's legislation provides for the preliminary stage of forming a pool of judicial candidates (for example, a reserve), then requirements set in the benchmark apply to the formation of such pools (reserves). Candidates included in the pool should be chosen for the position based on the competition results and not in a discretionary way; otherwise, it would deprive the competitive selection of any sense. The announcement of the possibility of applying to the list of contenders for the judicial office should be made publicly online, and any eligible candidate should be able to apply.

According to the Judicial Code of Armenia, based on the decision of the Supreme Judicial Council, an announcement of judicial vacancies is made online; it must contain the competition requirements, the time and venue for accepting applications, and the number of vacancies to be filled. Any person fulfilling the eligibility criteria provided by the Code may apply. The candidates have one month from the date of publication to submit applications. Therefore, Armenia is compliant with **element A** of the benchmark.

As regards the selection based on merits (**element B**), the Judicial Code provides a detailed regulation of the procedure for the qualification assessment that includes a written exam and an interview with the SJC, along with other steps. In particular, the interview stage aims to ascertain whether the candidate has the skills and qualities necessary to act effectively in the office of a judge by evaluating, among other issues, the professional work experience of the contender, motivation to become a judge, awareness of the requirements of the fundamental legal acts concerning the status of a judge, qualities (in particular, self-control, integrity, conduct, moderate use of reputation (influence), sense of responsibility, listening skills, communication skills, sense of justice, analytical skills and other non-professional qualities necessary for the activity of a judge. The score obtained during the selection to the reserve pool influences the decision to recommend the candidate for the judicial position when a vacancy appears (there are several groups of candidates from which the selection is made one after another).

The SJC decisions to include in the reserve pool do not contain a justification. There are no formal criteria for assessing judicial candidates[28]; the issues that should be discussed during the interview (see the list in the previous paragraph) are not formal criteria for selection and do not require the SJC to select candidates who show the highest compliance with them; there is no clarity as to the weight that is assigned to each of the considerations. The SJC members are provided with a matrix to help them evaluate candidates, but this matrix is only a guideline, and the SJC members do not have to use it to score candidates according to the uniform criteria. Therefore, the final SJC decision on the selection or rejection is fully discretional (with the SJC discussion and vote conducted in camera while the total number of votes for and against is published on the SJC's website). The Venice Commission, in its 2017 opinion, was also

[28] The representatives of the SJC referred to the criteria contained in the SJC order adopted on 27.09.2018, but the monitoring team was not able to review it as it was not provided in English.

concerned that the written examination results could be overturned at the interview stage and do not impact the final decision on the selection.[29]

The practice of judicial selection shows that it may not always be based on merits. The main concern lies with the assessment of integrity, especially the consideration of the conclusions of the Corruption Prevention Commission (CPC), which conducts extensive integrity checks of all candidates for judicial office. The SJC has, in several cases, selected and recommended candidates who had a negative CPC conclusion or a conclusion raising integrity concerns.[30] While the CPC's opinions are advisory, the monitoring team believes that the SJC should not support candidates with a negative conclusion (or conclusions with integrity concerns) without providing a proper justification and considering in detail all allegations against the candidate's integrity raised by the CPC (and other stakeholders) during the candidate's consideration, including by discussing such concerns with the candidate at the interview and explaining the reasons for supporting such a candidate in the SJC decision. The issue with the integrity assessment was highlighted in a recent case of a person whom the SJC recommended for the judicial position in the anti-corruption court in November 2022. CSOs highly criticised the selection,[31] and the candidate reportedly received a negative opinion of the CPC. Eventually, this person was not appointed as a judge of the anti-corruption court according to his own withdrawal, but in a short time, the SJC selected him as the president of the first instance general jurisdiction criminal court of Yerevan.

Non-governmental stakeholders also had the view that the selection of judges was not merit-based (see the NGO opinion at the end of this PA).

[29] In its 2017 opinion on the draft Judicial Code (Venice Commission, Opinion on the Draft Judicial Code of Armenia, 2017, paras.117-118, www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)019-e.), the Venice Commission was also concerned that the written examination results were effectively nullified by the interview results, and the strongest candidate might be replaced after the interview with the weakest one. The Venice Commission recommended defining how the results of the written qualification exam are accounted in the process of recruitment of candidates. This conclusion was repeated in the 2019 Opinion (CDL-AD(2019)024, para. 56, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)024-e): "Written tests permit to evaluate the knowledge and the skills of the candidates in a more objective way. Therefore, the result of the test should play at least some role in the final appointment decision. Indeed, that does not exclude that the final ranking of the candidates must also be influenced by their performance at the interview. Probably, a mixed system, where the points obtained at the written test are added to the points obtained at the interview, could be used. That being said, the most important guarantees against arbitrariness are the transparency of the procedure and the reasoning of the appointment decisions."

[30] According to the SJC, there were two cases in 2022 when it recommended for approval candidates with a negative CPC opinion. See also an NGO (Protection of Rights Without Borders) report with analysis of the selection process for judges of the Anti-Corruption Court in 2022, available at https://prwb.am/en/2023/06/20/zekuyc-7.

[31] See statements by CSOs: LINK, LINK.

Benchmark 6.1.5.

Judges are promoted:

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

The SJC compiles lists of candidates for promotion to the Court of Appeal and the Cassation Court following an announcement published online. Any eligible candidate may apply, which is in line with the requirements of **element A**.

Regarding promotion based on merit (**element B**), the Judicial Code stipulates that when drawing up the promotion list of judge candidates, the Supreme Judicial Council shall take into account the skills and qualities necessary for acting effectively in the office of a judge of a Court of Appeal. The advisory opinion on integrity is submitted by the Commission for the Prevention of Corruption in respect of a candidate, whereas in respect of a judge — also the results of performance evaluation. The performance evaluation of a judge is based on the following criteria: 1) quality and professionalism of the judicial work (ability to justify the judicial act; ability to preside over the court session and conduct it as prescribed by law); 2) effectiveness of the judicial work (effective workload management and work planning; examination of cases and delivery of judicial acts within reasonable time limits; observance by a judge of time limits prescribed by law for the performance of individual procedural actions; ability to ensure an efficient working environment); and 3) judge's ethics and conduct (observance of the rules of conduct and ethics; contribution to the public perception of the court and to the confidence therein, attitude towards other judges and the staff of the court).

The weak point in this procedure is the lack of clear criteria on which the SJC members should vote for or against candidates and the lack of justification in the SJC decisions. For these reasons, the procedure is not compliant with **element B** of the benchmark for promoting judges to the court of appeal.

Also, there is a significant difference in the selection of judges to the courts of appeal and judges of the Cassation Court. Regarding the appeals courts, the SJC selects candidates and proposes one candidate to the President, who is limited in the possibility of rejecting the candidate. In the case of the Cassation Court, the SJC must select three candidates for each vacant position and propose them to the parliament. The election among the proposed candidates carried out by the parliament is not merit-based and can be influenced by political considerations. Non-governmental stakeholders also had the view that the promotion of judges was not merit-based (see the section at the end of this PA).

The Armenian authorities informed that, in 2023, they worked on developing a new system for evaluating judges. According to them, implementing the new system will allow the assessment and promotion following more objective criteria and make the process more transparent to society. This objective was included in the draft Action Plan for 2023-2026 of the National Anti-Corruption Strategy. The monitoring team welcomes steps towards improving the merit-based nature and transparency of judicial selection and promotion in Armenia.

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

Background

The chairpersons of the first instance and appellate courts were appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from among the members of the corresponding court. The National Assembly elected the Chairperson of the Court of Cassation by majority of votes of the total number of Deputies upon recommendation of the Supreme Judicial Council from among the members of the Court of Cassation.

The amount of funding allocated to the judicial system in 2022 amounted to almost 90% of what had been requested. The World Bank report noted that contrary to the trend in demand, budget allocations for the judiciary have decreased over time by 1.7% from 2019 to 2021.

Assessment of compliance

During the evaluation period in Armenia, court presidents were not selected by the judges of the respective court or the Judicial Council. The monitoring found that the existing procedure of court presidents selected by the SJC from among judges of the court who all automatically were considered candidates for the position was not merit-based and not completed through a competitive procedure.

The salary of the specialised anti-corruption judges was relatively high and addressed the additional risks related to the adjudication in these cases. As to other judges, their remuneration was not viewed as sufficient in 2022, especially considering the level of remuneration of prosecutors and the high workload of judges at the first instance court level. Both judges and non-governmental stakeholders agreed that the insufficient remuneration of judicial assistants and court clerks created significant integrity risks.[32]

Benchmark 6.2.1.

Court presidents are elected or appointed:

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

According to the Constitution and the Judicial Code, the chairpersons of the courts of first instance and courts of appeal are appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from among the members of the corresponding court, for a term of three years. The National Assembly elects the Chairperson of the Court of Cassation, by majority of votes of the total number of Deputies, upon recommendation of the Supreme Judicial Council, from among the members of the Court of Cassation, for six years. The chairpersons of the chambers of the Court of Cassation are appointed by the President of the Republic, upon recommendation of the Supreme Judicial Council, from

[32] The Government informed that in July 2023 it approved the draft law stipulating a 60% increase of the salary of judges of the first instance general jurisdiction courts, the bankruptcy court, and the administrative court. If the draft law is adopted, the increase will take effect on 1 January 2024.

among the members of the corresponding chamber for a term of six years. Therefore, Armenia is not compliant with **element A**.

The procedure for the selection of the candidates (**element B**) for the court chairpersons is the following: when the chairperson's position is about to become vacant due to the expiration of the term of office of the current chairperson or shortly after it became vacant on other grounds, the Judicial Department submits to the Supreme Judicial Council the list of all judges of the respective court of first instance who have at least three years of experience in the position of a judge, have not been sanctioned with a disciplinary penalty, have not been appointed as a chairperson of this court during the last three years and are not SJC members. The SJC studies, at its session, the personal files of judges included in the list submitted and, if necessary, invites them to an interview. When considering candidates, the SJC takes into account skills and qualities necessary for acting effectively in the office of a chairperson of the court, including the following: (1) professional reputation of a judge; (2) attitude towards his or her colleagues during a performance of duties of a judge; (3) organisational and managerial abilities of a judge. The SJC holds an open vote (but in a meeting that is held in camera) based on which the person having received the majority vote of all the SJC members is proposed to the President of the Republic. A similar procedure applies to the selection of the chairpersons of a Court of Appeal and the Cassation Court.

The monitoring team considers the selection procedure not merit-based because there are no formal criteria that the selection decision must follow, no consideration of the candidate's qualities compared with other candidates, and no comprehensive analysis of the candidates' merits by conducting interviews with all candidates. In addition to the above issues, the procedure for the selection of the Chairperson of the Cassation Court is not compliant with **element B** of the benchmark because the parliament makes the appointment without following any selection criteria, and the parliament's decision may be influenced by political considerations.

The above-mentioned (see benchmark 6.1.4.) case of a judge who was appointed as the chairperson of the Yerevan first instance criminal court despite negative conclusions of the integrity check and other concerns raised by the civil society also show that the selection of court chairpersons may not be merit-based in practice.[33]

Element C of the benchmark requires that court presidents are elected or appointed via a competitive procedure. In this regard, there is no open call for candidates and no formal process of applying to the court chairperson's position in Armenia. The SJC selects the candidates for the chairperson from all eligible judges of the respective court, so all judges are technically considered candidates even without applying for the position. This goes against the competitiveness of the process when the person is considered a candidate and can be picked even without expressing the intention to become a court chairperson and without being consulted about it. The selection process also has deficiencies as candidates are not interviewed in all cases and for other reasons explained under the previous element.[34] **Element C** is not compliant.

[33] The authorities disagreed with the assessment and stated that the existing rules established clear and objective procedures, clear legislative criteria for the appointment of the court chairman, and that an invitation to an interview was an additional tool and if the interview was made mandatory it could introduce subjectivity.

[34] The authorities disagreed noting that, in the process of appointing the court chairperson, the candidacies of all judges who meet the requirements are subject to discussion in the SJC, and in this way every judge has the right to participate in this process making any interference or subjective influence impossible.

Benchmark 6.2.2.

The budgetary funding allocated to the judiciary:

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

The amount of funding allocated to the judicial system in 2022 amounted to 14,227,589.3 thousand AMD, which was 89.6% of what had been requested. As this number is very close to 90% mentioned in the benchmark, the monitoring team considers Armenia compliant under **element A**.

However, as was noted in the World Bank report, contrary to the trend in demand, budget allocations for the judiciary have decreased over time by 1.7% from 2019 to 2021. Further, the wage bill is crowding out all other functions, leaving little to no room for innovation, investments, maintenance, and ICT upgrades. According to the report, Armenia ranked low both in justice spending per gross domestic product as well as in its real per capita justice spending when compared to the European Commission for the Efficiency of Justice member states. Even though the SJC approved its own and the courts' budget applications and medium-term expenditure plans, the SJC's de facto influence on the final budget decision taken by the National Assembly was limited. Low capacities at court and management levels hampered the budget preparation and adoption processes.[35]

As regards the possibility for judicial representatives to participate in consideration of the judicial budget, according to Article 38 of the Judicial Code, the position of the Supreme Judicial Council on the budget bid or the medium-term expenditure programme is presented in the National Assembly by the SJC chairperson or, upon his assignment, the head of the Judicial Department. The Judicial Department is set up by the SJC, and its head can be considered a judicial representative. Armenia is compliant with **element B**.

Benchmark 6.2.3.

The level of judicial remuneration:

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

According to the Law "On the Remuneration of Persons Holding Public Office and Public Service Positions", the salary of a judge is determined by multiplying the base salary rate and the coefficient, which is different for judges of different levels and specialisations. The State Budget Law establishes the base salary rate amount for each year. Armenia complies with **element A**.

[35] World Bank (2023), Supporting Judicial Reforms in Armenia: A Forward Look, Public Expenditure and Performance Review of the Judiciary in Armenia, p. 2, https://thedocs.worldbank.org/en/doc/a8b97de2cdf5b18ef2d9584d4f758801-0080062023/original/Forward-Look-Armenia-Judiciary-eng.pdf.

There were diverse views on the sufficiency of judicial remuneration in Armenia. Interlocutors noted that the salary of the specialised anti-corruption judges was relatively high and addressed the additional risks related to the adjudication in these cases. As to other judges, their remuneration was not viewed by all stakeholders as sufficient, especially considering the level of remuneration of prosecutors and the high workload of judges at the first instance court level. Notably, in 2023, the remuneration of prosecutors was increased in the law, but it was not immediately matched by the increase in judicial remuneration (although such amendments were later prepared and were expected to be adopted). The Government later informed that in July 2023, it endorsed a draft law stipulating a 60% increase in salary for some categories of judges starting from 2024.

No discretionary payments are provided in the law as foreseen by **element B** of this benchmark.

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

Background

The Supreme Judicial Council is set up based on the Constitution and functions based on the Constitutional Law "Judicial Code" that define its powers. There are three other bodies (the Ethics and Disciplinary Commission, the Training Commission, and the Commission for Performance Evaluation of Judges) that are set up under the Judicial Code by the General Assembly of Judges. The latter is defined as a self-government body of judges (the Judicial Code calls the three mentioned bodies as "the Commissions of the General Assembly"). Though different in their legal status from the Supreme Judicial Council, which is a constitutional body, these three bodies qualify as "judicial governance bodies" according to this monitoring's methodology definition because they are set up by law, are institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court and court administration, have a mandate defined by the law, and manage their own budget. As to the latter aspect, what matters is that the budget of these bodies is not part of the executive branch and that the Judicial Department (a judicial body) manages their budget along with the budgets of the SCJ and courts.

The monitoring team also notes that these bodies are not part of the Supreme Judicial Council; they are separate bodies linked to the judicial self-governance body – the General Assembly of Judges, which decides on their composition (which includes non-judicial members), approves their operational procedures, and creates working groups to support the commissions. The three Commissions perform important functions regarding judicial careers (see next paragraph). In some cases, their decisions are final (for example, on the performance evaluation or determining training needs and training procedures), in others (for example, in disciplinary matters) – the final decisions are with the Supreme Judicial Council, but these bodies play a filtering role and prepare relevant decisions for the SJC consideration. For these reasons, these commissions will be evaluated under this indicator as "judicial governance bodies" along with the Supreme Judicial Council.

The Ethics and Disciplinary Commission institutes disciplinary proceedings against judges and performs other functions assigned to it by the Judicial Code. The Training Commission approves the procedure for training of judges, submits the list of persons that should be trained at the Academy of Judges, prescribes the amount of training required for judges and judge candidates, and performs other functions related to judicial training. The Commission for Performance Evaluation of Judges conducts the performance evaluation of judges, and if it detects a violation of the norms of substantive or procedural law or a violation of the rules of conduct of a judge, it submits a proposal to the Ethics and Disciplinary Commission to institute the disciplinary proceedings against judges.

Assessment of compliance

The Supreme Judicial Council and three other judicial governance bodies functioned in 2022 and played an important role in the selection, promotion, evaluation of judges and holding them liable for disciplinary offences. The composition of all judicial governance bodies included not less than half of judges elected by their peers from different levels of the judicial system, but there was an insufficient number of non-judicial members in the Ethics and Disciplinary Commission and the Training Commission. The decisions of two judicial governance bodies (the SJC and the Training Commission) did not contain an explanation of reasons for taking a decision. Decisions of the Commission for Performance Evaluation of Judges contained a limited explanation, while the Ethics and Disciplinary Commission's decisions contained a detailed justification that ensured transparency of the reasons behind each decision.

Benchmark 6.3.1.

	Compliance			
	Supreme Judicial Council	**Ethics and Disciplinary Commission**	**Training Commission**	**Commission for Performance Evaluation of Judges**
The Judicial Council and other judicial governance bodies are set up and function based on the Constitution and/or law that define their powers	✓	✓	✓	✓

The Supreme Judicial Council is set up by the Constitution of the Republic of Armenia as an independent state body that guarantees the independence of courts and judges. The Constitution and the Judicial Code define the SJC's powers. Three other bodies (the Ethics and Disciplinary Commission, the Training Commission, and the Commission for Performance Evaluation of Judges) have been set up and operate based on the Judicial Code. All four judicial governance bodies were compliant with the benchmark.

Benchmark 6.3.2.

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

Element	Compliance			
	Supreme Judicial Council	**Ethics and Disciplinary Commission**	**Training Commission**	**Commission for Performance Evaluation of Judges**
A. Are elected by their peers	✓	✓	✓	✓
B. Represent all levels of the judicial system	✓	✓	✓	✓

All four judicial governance bodies included not less than half of the judges in their composition. All of them complied with **element A** because their judicial members were elected by other judges. Particularly:

Supreme Judicial Council: The SJC consists of 10 members, including five judges elected by the General Assembly of Judges from among judges having at least ten years of experience as a judge, and five non-

judicial members elected by the National Assembly by at least 3/5 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.

Ethics and Disciplinary Commission: The Commission is composed of eight members, six of which are judicial members elected by the General Assembly of Judges and two - non-judicial members.

Training Commission: The Commission is composed of seven members, five of which are judicial members elected by the General Assembly of Judges and two - non-judicial members.

Commission for Performance Evaluation of Judges: The Commission is composed of five members, three of which are judicial members elected by the General Assembly of Judges and two - academic lawyers.

The mentioned four judicial governance bodies also complied with **element B** as their judicial members represented all levels of the judicial system. Namely:

Supreme Judicial Council: Judicial members of the SJC are elected by the General Assembly of Judges from among judges of all court instances, with the following proportionality: 1) one member from the Court of Cassation; 2) one member from the courts of appeal; 3) three members from the courts of first instance; moreover, at least one member should be from the courts of first instance of general jurisdiction of the marzes. Judges of all specialisations must be represented in the Supreme Judicial Council.

Ethics and Disciplinary Commission: Two out of six judicial members are selected from among the judges of specialised courts, two - from among the judges of the Court of First Instance of General Jurisdiction— each of them holding criminal and civil specialisation, respectively, one — from among the judges of the Courts of Appeal, one - from among the judges of the Court of Cassation.

Training Commission: Out of five judicial members, one is selected from among the judges of the Court of Cassation, two - from among the judges of the Courts of Appeal, and two - from among the judges of Courts of First Instance.

Commission for Performance Evaluation of Judges: Out of three judicial members, one is selected from among the judges of the Court of Cassation, one - from among the judges of the Courts of Appeal, and one - from the Courts of First Instance.

Benchmark 6.3.3.

	Compliance			
	Supreme Judicial Council	**Ethics and Disciplinary Commission**	**Training Commission**	**Commission for Performance Evaluation of Judges**
The composition of the Judicial Council and other judicial governance bodies includes at least 1/3 of non-judicial members with voting rights who represent the civil society or other non-governmental stakeholders (for example, academia, law professors, attorneys, human rights defenders, NGO representatives)	✓	X	X	✓

Out of the existing four judicial governance bodies, the compositions of the Ethics and Disciplinary Commission and the Training Commission were not compliant with the requirement of 1/3 of non-judicial members foreseen by this benchmark.

Supreme Judicial Council: Half of the SCJ's composition are non-judicial members elected 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.

Ethics and Disciplinary Commission: Out of eight members of the Commission, two are lawyers possessing high professional qualities, holding an academic degree in Law or at least five years of professional work experience, not holding membership to any political party, and having not been imposed the restrictions provided for in the law. Two out of eight is less than 1/3. According to the authorities, the Government has been considering a draft law amending the Constitutional Law "Judicial Code" to increase the number of non-judges of the Ethics and Disciplinary Commission to five members.

Training Commission: Out of seven members of the Commission, two are lawyers possessing high professional qualities and holding an academic degree in Law or at least five years of professional work experience. Two out of seven is less than 1/3.

Commission for Performance Evaluation of Judges: Out of five members of the Commission, two are academic lawyers possessing high professional qualities and holding an academic degree in Law and at least five years of work experience. Two out of five members is more than 1/3.

Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

Element	Compliance			
	Supreme Judicial Council	Ethics and Disciplinary Commission	Training Commission	Commission for Performance Evaluation of Judges
A. Are published online	✓	✓	X	X
B. Include an explanation of the reasons for taking a specific decision	X	✓	X	X

Out of the four evaluated judicial governance bodies, the decisions of two - the Training Commission and the Commission for Performance Evaluation of Judges – were not published online (**element A**). Particularly:

Supreme Judicial Council: Decisions of the SJC were published online (https://court.am/hy/decisions, https://court.am/hy/disciplinary).

Ethics and Disciplinary Commission: Decisions of the Ethics and Disciplinary Commission concern the disciplinary proceedings against a judge. The Commission does not make a final decision on the disciplinary liability but refers its recommendations to the SCJ. Publishing the preliminary conclusion in the disciplinary proceedings against a judge may affect judicial independence. Considering that the final decision on the disciplinary violation is taken by the SJC, is published online, and includes conclusions of the Ethics and Disciplinary Commission, the monitoring team considers Armenia compliant as to the publication of the Ethics and Disciplinary Commission's decisions.

Training Commission: The decisions of the Training Commission were not made public; the Commission has published only the statistics of its work.

Commission for Performance Evaluation of Judges: The decisions of the Commission for Performance Evaluation of Judges were not made public; the Commission has published only the statistics of its work.

In terms of an explanation of the reasons for taking a specific decision (**element B**), the decisions of two judicial governance bodies (the SJC and the Training Commission) did not contain an explanation of reasons for taking a decision. Decisions of the Commission for Performance Evaluation of Judges contained a limited explanation:

Supreme Judicial Council: The examples of decisions provided to the monitoring team (for example, concerning the nomination of candidates for judicial positions) showed that they did not explain reasons for taking a decision and were limited to referencing the legal acts and stating the decision.

Ethics and Disciplinary Commission: The examples of the Ethics and Disciplinary Commission's decisions provided to the monitoring team showed an extensive explanation of reasons for taking a specific decision based on a disciplinary complaint.

Training Commission: The examples of the Training Commission's decisions provided to the monitoring team showed that the decision on the qualification examination of judicial candidates under Article 104, part 3, of the Judicial Code did not explain reasons for taking a specific decision. Other decisions concerned the authorization for a judge to attend an international conference (a decision that did not require a justification) and the decision on the assessment of the training needs of judges (the decision included a justification with the results of a survey of judges).

Commission for Performance Evaluation of Judges: The examples of the Commission for Performance Evaluation of Judges' decisions provided to the monitoring team showed that they contained an explanation of reasons for taking a specific decision but in a limited way. The decision indicated how many points the judge was allocated by the commission members in total (without specifying individual points allocated by different commission members) and explained the reasons for deducting points when it concerned objective indicators that were based on the statistics (for example, the number of decisions made within the time limits). However, the decision did not explain why the judge received certain points under the quality indicators (for example, the ability to manage the court session and conduct it in the order established by law or the ability to justify the judicial act).

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

Background

The disciplinary investigation into alleged judicial misconduct was carried out by the body entitled to institute disciplinary proceedings against a judge. The Judicial Code defined three such bodies: the Ethics and Disciplinary Commission, the Ministry of Justice, and the Corruption Prevention Commission. The decisions on the application of disciplinary sanctions were taken by the Supreme Judicial Council.

Assessment of compliance

Not all grounds for the disciplinary liability of judges were clear or explained in the legislation. The problem was exacerbated by the active use of these grounds (for example, "the conduct discrediting the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary"). The grounds for violating substantive or procedural law provisions was also found problematic. The disciplinary investigation of allegations against judges was separated from the decision-making in such cases, although the role of the Ministry of Justice in reviewing complaints against judges and initiating disciplinary cases against them raised concerns. The right of judicial appeal against disciplinary decisions of the Supreme Judicial Council did not exist in 2022, which some interlocutors viewed as a serious deficiency affecting judges' rights and depriving them of fair trial guarantees in the disciplinary proceedings. The Criminal Code of Armenia punished delivering an obviously unjust judgment by a judge out of mercenary

motives or other personal motives or group interests; however, no judge was sanctioned under this provision in 2022.

Benchmark 6.4.1.

The law stipulates:

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

According to **element A** of the benchmark, the legislation shall foresee clear grounds for the disciplinary liability of judges. In this regard, the Judicial Code provides two broad grounds for the disciplinary liability of a judge: 1) a violation of provisions of substantive or procedural law while administering justice or exercising, as a court, other powers provided for by law, which has been committed deliberately or with gross negligence; 2) a gross violation by the judge of the rules of judicial conduct prescribed by this Code, except for the rule defined by point 11 of part 1 of Article 69 of this Law (restrictions on accepting gifts), committed with intent or gross negligence. The violation of the rules of judicial conduct includes such broadly formulated actions as "any conduct discrediting the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary", using or authorising other persons to use the high reputation of the judge for their benefit or for the benefit of another person. Such grounds are not in line with the **element A** requirements.

Where the grounds for disciplinary action are defined in a too vague or too broad manner, there is a higher risk that they could be used in subjective and discretionary ways. The problem is exacerbated by the active use of these grounds; for example, in 2022, SJC applied disciplinary sanctions to six judges for "the conduct discrediting the judiciary, as well as decreasing the public confidence in the independence and impartiality of the judiciary." The ground of violating provisions of substantive or procedural law is also problematic, as the SJC should not review the court decisions, which can be reversed only through appeal proceedings.[36]

The Judicial Code regulates all main steps of the disciplinary proceedings against a judge as required by **element B** of the benchmark.

Benchmark 6.4.2.

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

The disciplinary investigation is conducted by the body entitled to institute disciplinary proceedings against a judge. The Judicial Code defines three such bodies: the Ethics and Disciplinary Commission, the Ministry

[36] In 2022, the SJC imposed disciplinary sanctions for violating substantive law in two cases and for violating the procedural law requirements – in eight cases.

of Justice, and the Corruption Prevention Commission. The decisions on the application of disciplinary sanctions are taken by the Supreme Judicial Council. Armenia is compliant with this benchmark.

Benchmark 6.4.3.

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

The Judicial Code provides several procedural guarantees for a judge in disciplinary proceedings. During the investigative stage, the judge may submit written explanations and evidence, file motions, receive copies of disciplinary proceeding materials from the body instituting the proceedings, and exercise in person or through an advocate of the mentioned rights. During the consideration in the SJC, the judge may familiarise with, take excerpts from, and make copies of the materials that served as a ground for consideration of the issue in the SJC; ask questions, file objections, give explanations, and file motions; submit evidence and participate in their examination; participate in the SJC session, acting in person, as well as through an advocate; etc. There are no reported issues with the enforcement of these guarantees in practice.

The only issue is with the right of judicial appeal against disciplinary decisions of the Supreme Judicial Council, which did not exist in 2022. Judges interviewed during the on-site visit affirmed that they viewed the lack of judicial appeal as a serious deficiency affecting their rights and depriving them of fair trial guarantees in the disciplinary proceedings. The monitoring team agrees with such an assessment and considers the introduction of a court appeal an essential guarantee of judicial independence, especially in the context of Armenia, where interlocutors raised concern about the use of disciplinary proceedings against judges as a tool to suppress dissenting opinions of judges (see the section on the non-governmental views at the end of this Performance Area).

The authorities reported that the Ministry of Justice prepared draft amendments to the Judicial Code, introducing a new system of appeal against the decisions of the Supreme Judicial Council in disciplinary matters by a second-instance panel created within the Council itself. The Venice Commission reviewed the draft law and concluded that "the new mechanism would address the essence of the recommendation of the Committee of Ministers (CM/Rec(2010)12). An appeal to an external judicial body could be a better option, but it requires amending the Constitution. Therefore, the creation of an appellate instance within the Supreme Judicial Council appears to be an acceptable compromise."[37] In its report on Armenia, GRECO stated that "[w]hile an appeal to a court would be a better option, as stated in the [GRECO] recommendation, […] this would require amending the Constitution and that the creation of an appellate instance within the SJC was found to be an acceptable compromise by the Venice Commission."[38]

The benchmark clearly requires that the possibility of a judicial appeal is ensured. As in the previous monitoring rounds of the OECD/ACN Istanbul Anti-Corruption Action Plan, compliance with a benchmark

[37] Venice Commission, CDL-AD(2022)044, Opinion on the draft amendments to the Judicial Code, December 2022), para.48, www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)044-e. The Venice Commission also noted that "in the Armenian context, the most evident solution would be to provide for a right of appeal before an ordinary court, most naturally the Court of Cassation." This option was suggested in the 2017 Opinion of the Venice Commission.

[38] GRECO, March 2023, Fourth Evaluation Round, Second Interim Compliance Report on Armenia, para.36, https://rm.coe.int/grecorc4-2023-6-final-eng-2nd-interim-armenia-conf/1680aac534.

or recommendation may require a constitutional amendment. In any case, the said amendments have not been adopted, and during the evaluation period in 2022, Armenia was not compliant.

Benchmark 6.4.4.

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

Article 482 of the Criminal Code of the Republic of Armenia punishes delivering an obviously unjust judgment or other judicial act by a judge out of mercenary motives or other personal motives or group interests. However, no judge was sanctioned under this offence in 2022 and, therefore, Armenia is compliant with the benchmark.

Assessment of non-governmental stakeholders

The non-governmental stakeholders noted the issues with the selection and promotion of judges. In their opinion, the existing system is not merit-based and political considerations influence the decisions. The Supreme Judicial Council does not properly assess the integrity of the judicial candidates and often disregards the integrity check conclusions provided by the Commission on the Prevention of Corruption (CPC). The CPC's opinions are not public, which allows the SJC to disregard them. According to the interlocutors, as a possible reform in this regard, the CPC opinions should be made public, or, if not possible, then at least the summary of conclusions (whether the check was positive or negative) should be made public, and the SJC should be required to carefully consider each allegation of the lack of integrity. The CPC should also raise publicly the issue of consideration of its integrity check conclusions, as currently, the Commission is not vocal about this problem. The interlocutors noted the different approach to treating the CPC opinions by the prosecutorial bodies that consider the appointment or promotion of prosecutors compared with the consideration of the CPC opinions for judicial appointments; reportedly, in the case of prosecutors, the CPC integrity check opinions are reviewed and have an impact on the final decision. An NGO also proposed restricting the appointment as judges of candidates who have been engaged in political parties/political activity or held a political position in the past 2-3 years to ensure a higher level of independence and impartiality of judges.

According to NGOs, civil society organisations are not consulted when the non-judge members of the Supreme Judicial Council are nominated and considered. In practice, according to NGOs, when selecting the candidates, the ruling party in Parliament gives preference to the candidate that could be considered loyal or at least close to the ruling party. For instance, the recently appointed non-judicial members of the SJC were the former Minister of Justice, a Deputy Minister of Justice, and a head of the Investigative Committee. The former Minister of Justice, who became the SJC member, was immediately elected as the SJC chairperson. The civil society was concerned about the effect of such appointments on the functioning of the highest judicial governance body and its impact on judicial independence.

The stakeholders raised concerns as to the practice of disciplinary sanctions applied to judges for criticising the SJC or its individual members. There were several recent cases when the SJC sanctioned judges,

including by dismissal, for expressing publicly their opinions. The disciplinary cases followed the criticism such judges expressed towards the SJC.[39]

Among other problems mentioned by the stakeholders were the following:

1. The salary of court staff remains very low and makes it hard to attract or retain skilled personnel.
2. The high workload of judges exacerbated by the insufficient number of judges in the judicial system (and insufficient court staff whose pay is low) makes judges vulnerable to disciplinary complaints against delays in the administration of justice.

[39] See, among other publications, www.aravot-en.am/2023/02/15/319898, https://iravaban.net/en/420260.html. See also US State Department report on human rights practices in Armenia, www.state.gov/reports/2022-country-reports-on-human-rights-practices/armenia/.

7 Independence of public prosecution service

The selection of the Prosecutor General was not merit-based and competitive; it was influenced by political interests. Some of the grounds for the pre-term dismissal of the Prosecutor General were vague and allowed unfettered discretion. Armenia had no prosecutorial governance bodies in line with the monitoring benchmarks to insulate the prosecution service from political influence. Closed competitions for the positions in the prosecution service and the system of promotion were not transparent and based on merits, leaving too much discretion to the Prosecutor General. In practice, the integrity checks have impacted prosecutorial appointments, which is commendable. However, this needs to be institutionalised into formal selection criteria. The positive experience of selecting prosecutors for the specialised department on civil confiscation should be used to improve the recruitment procedures for other prosecutors. Disciplinary proceedings against prosecutors could be streamlined, in particular, by establishing narrow grounds for liability.

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

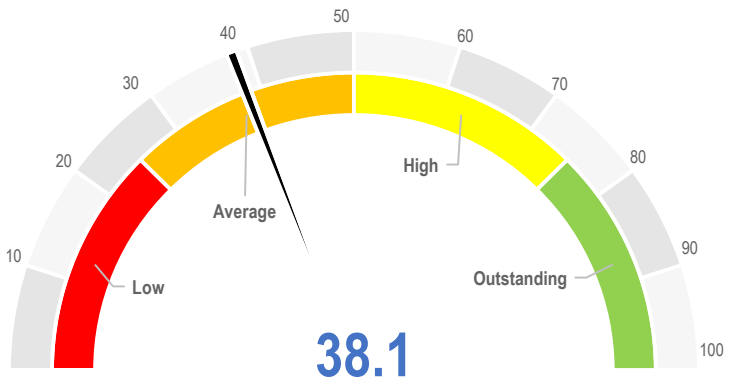
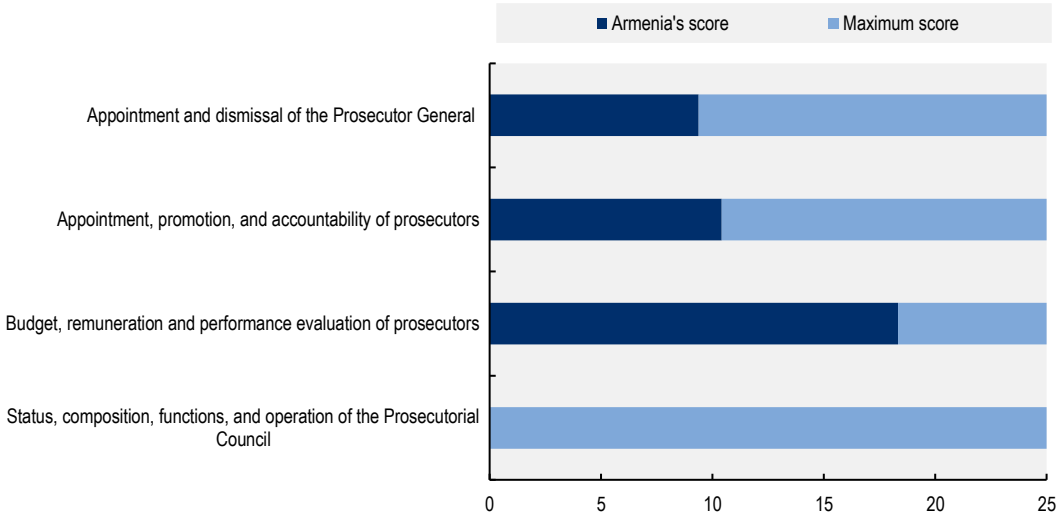


Figure 7.2. Performance level for Independence of Public Prosecution Service by indicators



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

Background

Appointment and dismissal of the Prosecutor General are regulated in the RA Constitution, the Law on the Prosecutor's Office, and the Constitutional Law on the Rules of Procedure of the National Assembly. The Prosecutor General is elected by the National Assembly, upon recommendation of the competent standing committee of the National Assembly, by at least three-fifths of votes of the total number of Deputies. Factions of the parliament propose each candidate for the position, from which the parliament's standing committee (the Standing Committee on State-Legal Issues) selects one candidate that is proposed to the

parliament. Candidates for the Prosecutor General undergo integrity checking conducted by the Corruption Prevention Commission. A prosecutorial governance body or an expert committee do not participate in the review of candidates for the Prosecutor General.

The grounds for terminating the office of the Prosecutor General are set in the Law on the Prosecutor's Office. Other than for objective grounds (for example, death, attaining the mandatory retirement age, criminal conviction, resignation, etc.), the National Assembly may, in the cases prescribed by the Law on the Prosecutor's Office, remove the Prosecutor General from office by at least three-fifths of votes of the total number of Deputies (see details below).

Assessment of compliance

There was no prosecutorial governance body in Armenia in 2022. Such a body or an independent expert committee did not participate in the selection of the Prosecutor General that happened in 2022. Grounds for dismissal of the Prosecutor General were set in the law, but some of them were not clear enough. The law regulated the dismissal procedure. Transparency of the procedure was ensured through the publicity of the parliament's sittings.

Benchmark 7.1.1.

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

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

According to the legislation of Armenia, a prosecutorial governance body or a committee, which is composed of non-political experts (e.g., civil society, academia, law professors, attorneys, human rights defenders), who are not public officials and are not subordinated to any public authorities, did not participate in the review of professional qualities and integrity of candidates for the Prosecutor General's position. The background integrity checks of the candidates conducted by the Corruption Prevention Commission is a commendable practice, but it does not influence compliance with the element. The authorities referred to the provision that the parliament's competent standing committee may engage specialists and experts in its work; however, it is an optional, not institutionalised arrangement that is not mandatory for the review of candidates for the Prosecutor General. Thus, the country is not compliant with **element A**.

In 2022, a new Prosecutor General was elected by the National Assembly due to the expiration of the mandate of the former Prosecutor General. The prosecutorial governance body or an expert committee was not involved in the selection because it was not provided in the legislation, leading to non-compliance with **element B**.

The last election of the Prosecutor General showed the deficiency of the existing system. The person elected as a new Prosecutor General in June 2022 by the National Assembly was an assistant to the current Prime Minister. The new Prosecutor General was elected with 70 votes in favour (out of 107 members of the National Assembly), with all votes given by the ruling "Civil Contract" faction. The opposition factions boycotted the sessions of the National Assembly and did not participate in the voting. According to NGOs, the fact that the candidature was proposed by the representatives of the "Civil

Contract" faction, and only this faction participated in the voting attested to the political nomination and appointment.

Benchmark 7.1.2.

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

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

Grounds for dismissal or termination of office of the Prosecutor General are set in the Law on the Prosecutor's Office as required by **element A** of the benchmark. In addition to objective grounds (for example, death, attaining the mandatory retirement age, criminal conviction, resignation, etc.), the Law provides four grounds for early termination: 1) PG has become seriously ill, which hinders or will hinder the performance of his or her duties for a long period of time; 2) PG committed a violation of the law or the rules of conduct of prosecutors, which has impaired the reputation of the Prosecutor's Office; 3) PG violated restrictions and incompatibility requirements; 4) other insurmountable obstacles to the exercise of his or her powers. In these cases, the National Assembly may dismiss the Prosecutor General from office by at least a three-fifths vote of all Deputies.

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

From the grounds mentioned above, two are problematic. First, "committing a violation of the law or the rules of conduct of prosecutors, which has impaired the reputation of the Prosecutor's Office" does not clearly provide what violation should be committed and what can be understood as "impairing the reputation of the Prosecutor's Office." Rules of conduct of prosecutors defined in the Law on the Prosecutor's Office are very broad and contain many ambiguous provisions, some of which overlap.[40] According to the authorities, these provisions from the Law are clarified in the rules established by the order of the Prosecutor General of 10 April 2018. The monitoring team reviewed the requirements set by

[40] For example: "to refrain, under any conditions and in any situation, from demonstrating — with his or her activities, practical, professional and moral characteristics — any conduct incompatible with or undermining the high reputation of the Prosecutor's Office, decreasing the public confidence in the Prosecutor's Office or casting doubt on the impartiality, objectivity and independence of the Prosecutor's Office"; "to avoid, under any conditions and in any situation, practical, professional or moral relations or demonstrating any conduct incompatible with the title of the prosecutor that may disgrace the reputation, good fame, honour or dignity of the prosecutor"; "to keep the reputation of the Prosecutor's Office high, inspire respect and confidence in the Prosecutor's Office and in himself or herself with his or her conduct and activities."

the Prosecutor General's Order. They contain a detailed list of the prosecutor's obligations inside and outside the performance of official duties. The law contains several articles on the rules of conduct – general rules of conduct, rules of conduct in official relations, and rules of conduct in extra-official relations. The "requirements" approved by the Prosecutor General regulate the same categories of rules, sometimes in more detail than the law, sometimes adding new elements that are not present in the law.

Regardless of the analysis of these requirements, Article 53 of the Law on the Prosecutor's Office refers to the "violation of the rules of conduct of a prosecutor" as a ground for disciplinary liability and does not mention any additional requirements approved by the Prosecutor General. Article 71 of the Law called "Rules of conduct of prosecutors" mentions that the "rules of conduct of prosecutors shall be prescribed by this Law, and the requirements arising from the rules of conduct established by this Law shall be prescribed upon the order of the Prosecutor General. The rules of conduct of prosecutors shall be binding for all prosecutors." Therefore, the law clearly separates the rules of conduct included directly in the law and "requirements arising from the rules of conduct" set by the Prosecutor General. According to the authorities, the requirements arising from the rules of conduct are always referred to during the disciplinary proceedings and, in practice, their use has never been disputed by prosecutors against whom the proceedings were conducted. However, the monitoring team notes that the law does not explain the status of the said "requirements", does not explicitly require following them, and does not establish that a violation of these "requirements" leads to disciplinary liability. Overall, the additional requirements do not remove the uncertainty (and, in some cases, introduce additional provisions that require interpretation) and do not clarify the rules of conduct set in the law; the disciplinary liability is linked to the rules set in the law and not additional requirements.[41]

The second problematic ground is the ground of "other insurmountable obstacles to the exercise of his or her powers" which is ambiguous and very broad and can include almost anything. The authorities stressed the difficulties for the legislation to provide an exhaustive list of such situations during the existence of which the performance of the General Prosecutor's powers would be impossible.

Armenia is not compliant with the requirements of **element B**.

Element C further requires that the law shall regulate the main steps of the procedure. In this regard, Article 153 of the Constitutional Law on the Rules of Procedure of the National Assembly defines the main steps of the procedure for dismissing the Prosecutor General, including the following: the draft decision on the dismissal can be proposed by the parliament's faction; during discussion of the proposal the Prosecutor General has the right to address the Assembly at its session and answer questions; the Corruption Prevention Commission submits its conclusion regarding alleged violation of incompatibility requirements and the conclusion is also made public; decision on the termination of office through secret ballot by at least three-fifths of the total number of votes of the deputies. Armenia is compliant with **element C**.

According to the authorities, transparency of the dismissal procedure is ensured by the public sittings of the National Assembly and its standing committees and by online broadcasting of the parliamentary hearings. The procedure for the dismissal of the Prosecutor General does not involve many steps; for example, the dismissal proposal is not considered in any standing committees and is submitted directly to a plenary session, which is held openly. Thus, the country is in line with **element D**.

[41] According to the authorities, the Prosecutor General's Office plans to align the internal rules with the guidelines under the Code of Conduct for Public Officials to be approved by the Corruption Prevention Commission.

Benchmark 7.1.3.

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

The benchmark is not applicable because there was no dismissal of the Prosecutor General in 2022 (the powers of the former Prosecutor General expired according to the law).

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

Background

Selection of prosecutors was regulated by the Law on the Prosecutor's Office and Prosecutor General's order. The list of candidates for prosecutors was completed through open and closed competitions. The open competition was held by the Qualification Commission of the Prosecutor's Office once a year. Where necessary, an extraordinary open competition might be held upon the Prosecutor General's decision. To supplement the list of candidates for prosecutors, a closed competition might be held during the year upon the assignment of the Prosecutor General. Promotion of prosecutors was conducted through the promotion lists for appointment to certain levels of the prosecutorial office.

Assessment of compliance

Armenia was not compliant with the benchmarks on the selection and promotion of prosecutors mostly because of the closed competitions existing in parallel to open recruitment and promotion procedures. Also, the Prosecutor General had an excessive amount of discretion when considering proposed candidates. There was no requirement in the Law for the Prosecutor General to base their decision on the candidate's merits and no clear criteria for not accepting proposed candidates. Rejections based on integrity concerns happened several times, and this practice should be institutionalised and provided in the regulations. Grounds for disciplinary liability and for dismissal of prosecutors were stipulated in the Law on Prosecutor's Office, but several grounds for disciplinary liability raised concerns. The authorities were working on improving the prosecution office's internal regulations to provide additional clarity and legal certainty to the proceedings. The main steps of the disciplinary procedure were set in the law, and disciplinary investigation of allegations against prosecutors was separated from the decision-making in such cases as required by benchmarks.

Benchmark 7.2.1.

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

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

Selection of prosecutors is regulated by the Law on the Prosecutor's Office and Prosecutor General's order. The list of candidates for prosecutors is completed through open and closed competitions. The open competition is held by the Qualification Commission of the Prosecutor's Office once a year. Where necessary, an extraordinary open competition may be held upon the Prosecutor General's decision. To supplement the list of candidates for prosecutors, a closed competition may be held during the year upon the assignment of the Prosecutor General. When considering candidates, the Qualification Commission checks the candidate's professional training, practical skills, awareness of the requirements of the fundamental legal acts related to his status, personal qualities and merits (self-control, behaviour, listening ability, communication skills, analytical abilities, etc.), as well as the conformity of the documents he submitted to the legal requirements. The Qualification Commission also considers the integrity check conclusions provided by the Corruption Prevention Commission. Candidates with a positive conclusion of the Qualification Commission are submitted to the Prosecutor General who has the right to include the submitted applicants on the list of candidates for prosecutors or make a reasoned decision on not including the applicant in the list, which the applicant can appeal in a court of law.

Contrary to the requirements of **elements A and B** of this benchmark, vacancies added through the closed competition are not announced online. The candidates are informed about the competition in writing or through oral invitations. Referring to the closed competition, the authorities noted that special procedures for filling positions in the Prosecutor General's Office were justified to enable the quick filling of vacant positions with personnel who meets specific professional knowledge and work experience that are relevant for the hierarchical and unified system of the prosecution office. However, the argument that specific knowledge and experience is needed for the filling in of some specialized prosecutorial departments' positions is not incompatible with a competitive recruitment procedure in which these specific requirements could be announced in online advertised vacancies. Besides, in the closed competitions, only candidates who were invited in writing or orally can participate as candidates.

The selection by the Qualification Commission is based on merits, as it takes into account the experience, skills and integrity of the candidates (**element C**). However, at the last stage, the Prosecutor General may reject proposed candidates. There is no requirement in the Law for the Prosecutor General to base his decision on the candidate's merits, and no clear criteria are provided for not accepting proposed candidates. There are also no criteria established for the Prosecutor General to select candidates from the list of pre-selected candidates and no ranking or priority of candidates included on such a list based on the selection. In practice, the Prosecutor General has, in several cases, refused the appointment of the proposed candidates because of the negative conclusions of integrity checks conducted by the Corruption Prevention Commission. This is a commendable practice, but it must be institutionalised and included in the regulations as a part of the clear criteria for confirming or rejecting nominations. The current regulation and practice are based on the complete discretion of the Prosecutor General. Thus, Armenia is not in line with **element C**.

The authorities noted that they considered the requirement of the Law to make a reasoned decision of the Prosecutor General on not including the person in the list of candidates for prosecutors a sufficient guarantee to restrain the apparent discretionary authority of the Prosecutor General. However, the monitoring team maintains the view that this choice of the Armenian legislator is not in line with the requirements of the benchmark and that the selection of the prosecutors should be based on clear and transparent criteria, which are known in advance and limit the discretion of the appointing authority.

Benchmark 7.2.2.

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

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

Promotion of prosecutors is conducted through the promotion lists for appointment to certain level of the prosecutorial office. The promotion lists of prosecutors are compiled by the Qualification Commission upon the order of the Prosecutor General: 1) in the course of regular competency evaluation of prosecutors; 2) on an extraordinary basis, when the Prosecutor General submits to the Qualification Commission a proposal on including a prosecutor in the promotion list by submitting relevant appraisal issued by the Prosecutor General or the Deputy Prosecutor General; the prosecutor is included in the official promotion list of prosecutors upon the positive conclusion of the Qualification Commission following conclusions of the integrity checks conducted by the Corruption Prevention Commission; 3) when the Qualification Commission adopts a decision on including the person, who applied to be included on the list of candidates for prosecutors and is exempt from studies at the Academy of Justice, simultaneously on the list of candidates for prosecutors and list of official promotion.

Contrary to the requirement of **element A**, vacancies for promotion are not announced to eligible candidates and are filled based on the promotion lists depending on the level of position. Persons included in one list cannot apply for a higher position. The Prosecutor General can propose including a prosecutor in the promotion list regardless of the competency evaluation.

The promotion is not competitive, as there is no possibility to apply for a vacancy, as required by **element B** of the benchmark. A prosecutor may only request an extraordinary attestation, after which he/she may be placed on the list for promotion, which, however, is not equivalent to applying to a vacancy for promotion.

The Law on the Prosecutor's Office does not condition the promotion of prosecutors on compliance with certain criteria and does not define on what grounds the Qualification Commission may give a positive or negative opinion to the prosecutor who may be eligible for promotion (**element C**). The results of the competency evaluation are only one ground for inclusion on the promotion list; prosecutors can also be promoted through extraordinary procedures regardless of the evaluation results. There are no criteria for the Prosecutor General to select a prosecutor from among those included on the list for promotion; the decision is fully discretionary. The authorities noted that, regarding the inclusion in the list of official promotions in an extraordinary order, the positive conclusion of the Qualification Committee was required, and there were many cases when the Qualification Commission issued a negative opinion on the prosecutors who were submitted by the Prosecutor General to the Qualification Commission for inclusion in the service promotion list.

In their comments to the assessment under this benchmark, the authorities also noted that they considered the existing promotion system to be based on meritocracy. It takes into account the features of the unified system of the Prosecutor General's Office, including the presence of units with different specializations in the Prosecutor General's Office system. To be included in the relevant promotion list, a prosecutor must have the required work experience and not have a disciplinary penalty, which, in combination with the system of conduct verification, contributes to filling the higher positions with professional, highly qualified prosecutors with integrity. As for the conclusion that a prosecutor included in the promotion list cannot apply for a higher position than is provided in the Law, the existing regulation was due to the features of the unified hierarchical system and aimed at ensuring the consistency and predictability of the career in the Prosecutor's Office.

The monitoring team welcomes the fact that the entries in the promotion list were assessed by the Qualification Commission and that the professional experience and conduct were verified by the Commission. However, the procedure in which the inclusion of a candidate on the promotion list and the non-inclusion of another one was not determined by clear, transparent, and merit-based criteria known in advance does not appear as a competitive procedure, as required by element C of the benchmark. The same lack of objective and merit-based criteria is valid for the selection made by the Prosecutor General on the candidates listed in the promotion list. Armenia is not compliant with **element C**.

According to the authorities, the law adopted on 1 March 2023 amended the Law on the Prosecution Office regarding the creation of the service promotion lists, with the aim of creating a more meritorious promotion system. Nevertheless, the monitoring team has not had the chance to assess the new law, as it fell outside the assessment period.

Benchmark 7.2.3.

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

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

As required by **element A** of the benchmark, grounds for disciplinary liability and dismissal of prosecutors are stipulated in the Law on Prosecutor’s Office (Articles 53 and 62).

The grounds for dismissal raise no concern as they are mainly based on objective reasons and are sufficiently clear. On the other hand, the grounds for disciplinary liability include 1) failure to perform or improper performance of duties; 2) violation of the rules of conduct of a prosecutor or the regulation on conflict of interests, except for violation of the rule prescribed by point 13 of part 1 of Article 72 of this Law (that is an observance of rules on acceptance of gifts); 3) regular violation of the internal rules of labour discipline; 4) failure to observe the restrictions and incompatibility requirements prescribed by Article 49 of this Law. The first two grounds are problematic because they are vague. **Element B** specifically mentions that “improper performance of duties” should not be a ground for disciplinary liability unless it is further broken down into more specific grounds. Violation of the rules of conduct covers a very broad list of possible misbehaviour formulated in ambiguous terms (see also assessment under benchmark 7.1.2.). Armenia is not compliant with this element.

The authorities informed that a new draft order of the Prosecutor General of the Republic of Armenia defining the procedure for initiating and conducting disciplinary proceedings against the prosecutor was being prepared. The new draft procedure aims to clarify and specify which violations, depending on their nature and severity, could be the grounds for initiating disciplinary proceedings against the prosecutor to reach the international standard.

The Law on the Prosecutor's Office regulates the main steps of the disciplinary proceedings. Although the detailed regulation of the procedure for instituting and carrying out disciplinary proceedings is determined by the Prosecutor General, the Law contains sufficient details about the main steps of the process and, thus, complies with **element C**.

Benchmark 7.2.4.

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

According to the Law on the Prosecutor's Office, the Prosecutor General institutes the disciplinary proceedings on his or her own initiative, based on the motions of superior prosecutors, based on communications from natural or legal persons, state and local self-government bodies or officials, mass media publications, or based on a court decision on submitting an application with the Prosecutor General for imposing disciplinary action. The Ethics Commission may also institute disciplinary proceedings. The Prosecutor General then sets up an ad hoc disciplinary commission to investigate the allegation. Following the disciplinary investigation, the case is submitted to the Ethics Commission, which decides on the disciplinary violation, prosecutor's guilt, and disciplinary sanction. The Prosecutor General imposes the disciplinary sanction proposed by the Ethics Commission.

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

Background

In 2022, the prosecution service received 108% of the budgetary allocations from the amount it requested. Representatives of the Prosecutor's Office participated in discussions leading to the approval of the 2022 budget. The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions defined the base salary rate and increments paid to prosecutors. The Law mentioned the monetary reward as an incentive payable to prosecutors with the procedure for assigning such rewards regulated by the Prosecutor General's order of 2018. The performance evaluation of prosecutors was conducted by the Qualification Commission appointed by the Prosecutor General, with a Deputy Prosecutor General chairing the Commission.

Assessment of compliance

The grounds for awarding monetary rewards to prosecutors were too broad, and the authorities started the revision process to further clarify them. The performance evaluation of prosecutors was conducted by the Qualification Commission appointed by the Prosecutor General, with a Deputy Prosecutor General chairing the Commission. When the Qualification Commission reviewed candidates for filling the list for prosecutors

specialised in the confiscation of illegal assets, it included in its composition two experts appointed by the Prosecutor General, including one international anti-corruption expert, which was a positive practice.

Benchmark 7.3.1.

The budgetary funding allocated to the prosecution service:

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

According to information provided by the authorities, the Prosecutor's Office requested 6,681,436.80 thousand AMD from the state budget for 2022 and received more funding than requested (7,267,162.80 thousand AMD).

Besides, representatives of the Prosecutor's Office participated in the approval of the 2022 budget. The General Secretary of the RA Prosecutor's Office participated in its discussion.

Armenia is compliant with both elements of this benchmark.

Benchmark 7.3.2.

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

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

The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions defines the base salary rate and increments paid to prosecutors. As the level of remuneration is stipulated in the law, Armenia is compliant with **element A** with 100% of its score.

Element B of the benchmark requires that if there are additional discretionary payments, they shall be assigned based on clear criteria. The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions mentions the monetary reward as one of the incentives that could be awarded to prosecutors, but the procedure for assigning such rewards is regulated by the Prosecutor General (order no. 31 of 2018). The authorities acknowledged that the grounds for awarding monetary rewards to prosecutors provided in the said order were broad and informed that the work was underway to further clarify them. The monitoring team agrees that the grounds for awarding incentives are quite broad,[42] and

[42] Article 52 of the Law: "for long-term service (term of office) or for excellent performance of official duties and special tasks"; paragraph 11 of the Order: "performed their official duties or special assignments excellently, who have achieved work accomplishments as a result of the performance of their official duties, or who have achieved excellent results in solving the problems within the scope of their activities."

there are no clear criteria in the law nor in the Order on when a monetary reward and not another type of incentive could be awarded and how “excellent performance” is measured.

In 2022, 55 prosecutors received individual monetary rewards. The authorities mention that, in practice, the monetary incentives were granted as "a result of the adoption of decisions by the prosecutor that were of essential and central importance for the criminal proceedings or the confiscation of illegal assets." They provided the following examples of prosecutors who received a reward: the prosecutor who had concluded the first settlement agreement in the proceedings of confiscation of illegal assets; the prosecutor in charge of overseeing the legality of pre-trial proceedings in the Anti-Corruption Committee, who sent a criminal case for money laundering to the court; the prosecutor from the Department of State Interests Protection who had discovered a particularly large amount of damage caused to the state. In the monitoring team’s opinion, these actions may merit recognition, but clear criteria are not provided in the legislation as required in the benchmark. **Element B** is not compliant.

The Law on the Remuneration of Persons Holding Public Positions and Public Service Positions also stipulates that the Prosecutor's Office is provided with a bonus fund of up to 30% of the salary fund and, according to the Prosecutor General’s Office, all prosecutors received such a bonus equally in the amount of 30% of the base salary rate (except for prosecutors sanctioned for a disciplinary offence). As these payments are distributed equally to all prosecutors, they are not considered discretionary payments.[43]

Benchmark 7.3.3.

Performance evaluation of prosecutors is carried out by:

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

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

The benchmark requires the Prosecutorial Council or another prosecutorial governance body to be responsible for conducting performance evaluations of prosecutors. The respective body should analyse and assess data on the performance of work by individual prosecutors and, depending on the system, approve a rating, score, conclusion or opinion on their performance.

Under the Law on the Prosecutor’s Office of the Republic of Armenia (Art. 50), the competency evaluation of prosecutors is carried out to determine the compliance of professional knowledge, practical and work skills of prosecutors with the position occupied, as well as for the purpose of official promotion. Prosecutors must participate in competency evaluation once every three years. An extraordinary competency

[43] The Government further informed that, from 1 January 2023, the base salary increased by 25.79 percent and bonus funds were reduced from 30 percent to 14 percent. As a result, discretionary bonus funds were reduced.

evaluation of a prosecutor may be carried out upon the Prosecutor General's order supported by the reasoned decision or on the prosecutor's request.

The Law, however, excludes a number of prosecutors from the competency evaluation, including 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 competency evaluation is conducted by the Qualification Commission. The Qualification Commission comprises nine members: the Rector of the Academy of Justice, one Deputy Prosecutor General, four prosecutors, and three academic lawyers appointed by the Prosecutor General. The Deputy Prosecutor General chairs the Qualification Commission. When the Commission reviews candidates for filling the list of prosecutors specialised in the confiscation of illegal assets, it also includes in its composition two experts appointed by the Prosecutor General (one of the experts should be an international anti-corruption expert). As the Commission is appointed by the Prosecutor General and the Deputy Prosecutor General chairs the Commission, it does not qualify as a prosecutorial governance body, but it qualifies as a prosecutorial body.

Because the Qualification Commission does not qualify as a prosecutorial governance body under the monitoring definitions and the performance evaluation is conducted by a prosecutorial body, as explained above, the country is compliant with **element A** with 70% of the score.

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

Background

There was no Prosecutorial Council in Armenia in 2022.

Assessment of compliance

Two bodies that operated in the prosecution system (the Ethics Commission and the Qualification Commission) did not qualify as prosecutorial governance bodies according to the definition used for this monitoring. Most members of these commissions were appointed by the Prosecutor General, and the Deputy Prosecutors General chaired the commissions. Therefore, Armenia was not compliant with the benchmarks of this indicator.

Benchmark 7.4.1.

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

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.2.

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

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

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.3.

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

Because there was no Prosecutorial Council in the assessment period, , the country is not compliant with the benchmark.

Benchmark 7.4.4.

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

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

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.5.

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

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

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Benchmark 7.4.6.

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

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

Because there was no Prosecutorial Council in the assessment period, the country is not compliant with the benchmark.

Assessment of non-governmental stakeholders

The non-governmental stakeholders made the following suggestions for reforms in the areas covered by the monitoring under this Performance Area:

1. Strengthen the guarantees of independence of the Prosecutor General by revising the selection process and ensuring its competitiveness, considering extension of the term of office, reviewing the statutory grounds for early termination of the Prosecutor General's powers in order to exclude the possibility for discretionary assessment, and restricting the appointment of candidates who have been engaged in political activity or held a political position in the past 2-3 years.

2. Consider the creation of a collegial body of prosecutorial self-governance or revision of the order and composition of the existing collegial bodies in order to ensure the autonomy and independence of prosecutors.
3. Limit the scope of discretion of the Prosecutor General in the process of appointment and promotion of prosecutors by setting additional criteria by law.
4. Increase the transparency and predictability of the disciplinary proceedings against prosecutors by reviewing the respective grounds and procedures.

The non-governmental stakeholders highlighted the positive practice of selection of prosecutors of the specialised department in the Prosecutor General's Office dealing with the civil confiscation of illicit origin property. The selection commission included an independent expert nominated by international organizations. The selection process involved an in-depth analysis of the integrity of candidates.

8 Specialized anti-corruption institutions

The anti-corruption investigative jurisdiction and institutional set-up have been significantly strengthened in Armenia during the past two years. The Anti-Corruption Committee started operating in 2021, supported by the new dedicated department in the Prosecutor's General Office. The head of the Anti-Corruption Committee was selected through an open process, which, however, was criticised for the narrow pool of qualified candidates who participated in the selection. Institutional reform was ongoing, and the new anti-corruption institutions must further strengthen their capacity and transparency. There was no dedicated agency, unit, or staff in Armenia for identifying and tracing criminal proceeds and managing seized and confiscated assets.

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

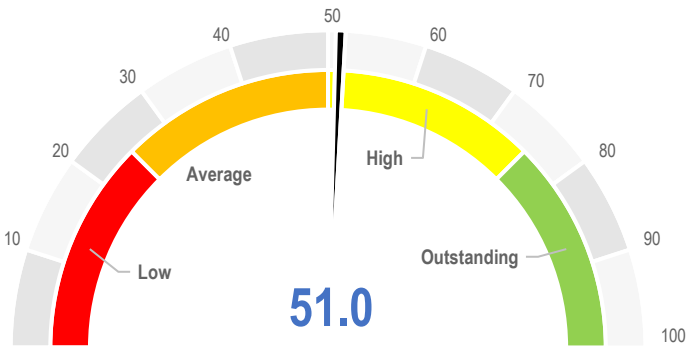
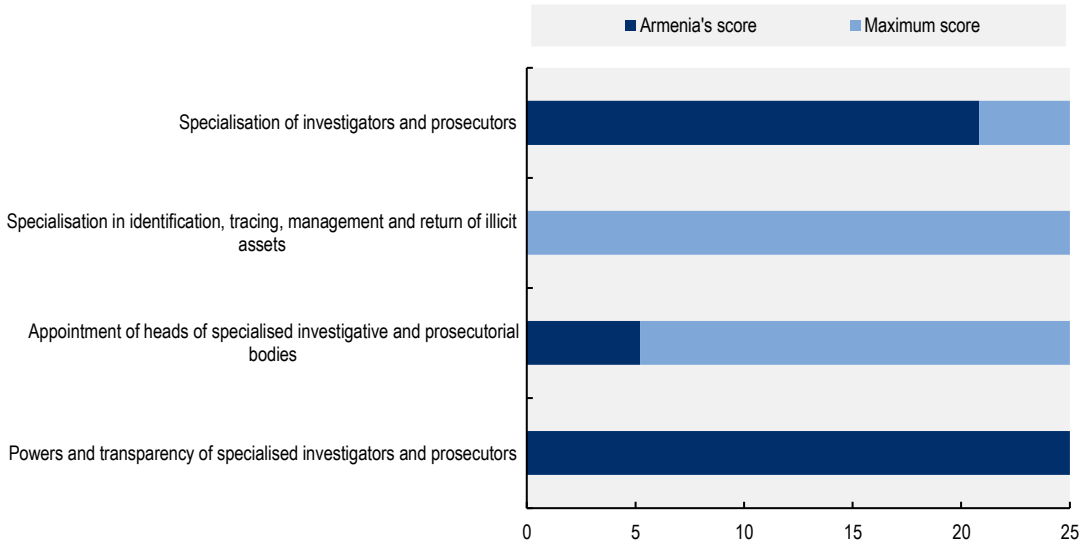


Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators



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

Background

The anti-corruption investigative jurisdiction and institutional set-up have been significantly revised in Armenia during the past two years. The new Criminal Procedure Code was adopted in 2021 and enacted (with certain exceptions) in July 2022. The Code determined two pre-trial investigation bodies – the Investigative Committee and the Anti-Corruption Committee (ACC). The Law on the Anti-Corruption Committee was adopted in 2021, and the ACC started its operation in October 2021. According to the Criminal Procedure Code's transitional provisions, different rules on the investigative jurisdiction should be

applied before 1 January 2023, during 2023, and starting from 1 January 2024, when all corruption offences will be investigated exclusively by the ACC. During 2022, the ACC had the investigative jurisdiction to investigate all corruption offences except for bribery and abuse of office in the private sector and some other limited exceptions (including the assignment of investigative authority for crimes committed by the ACC officers to the National Security Service).

Assessment of compliance

Investigation of corruption offences was assigned to the Anti-Corruption Committee set up in 2021. Regarding other crimes, the ACC had the authority to conduct a preliminary investigation if they were committed in combination with corruption crimes. In 2022, the Criminal Procedure Code established an exceptional nature of the possible transfer of cases from the ACC, but the ground for transfer ("as a last resort to ensure a proper, comprehensive, and impartial preliminary investigation") was subject to a very broad interpretation. At the same time, the information available to the monitoring team did not indicate there was any abuse of the power to transfer cases outside of the ACC or to different investigators. Armenia had a specialized prosecutorial body to oversee anti-corruption investigations and present such cases in court – a Department for Supervision over Legality of Pre-trial Proceedings in the Anti-Corruption Committee with the Prosecutor General's Office. The Department oversaw the legality of the preliminary investigation carried out by the Anti-Corruption Committee and supported the prosecution in court in these cases.

Benchmark 8.1.1.

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

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

Investigation of corruption offences is assigned to the Anti-Corruption Committee set up in 2021. Regarding other crimes, the ACC has the authority to conduct a preliminary investigation if they are committed in combination with corruption crimes. In 2022, investigators of the Anti-Corruption Committee investigated 1,203 criminal cases (proceedings). Thus, the country is compliant with **element B** with 100% of the score.

Benchmark 8.1.2.

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

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

According to Article 37 of the Criminal Procedure Code, during the pre-trial proceedings, a superior prosecutor shall transfer, by his decision and in accordance with the rules of investigative jurisdiction prescribed by this Code, the proceedings to another Body of Preliminary Investigation to ensure comprehensive and impartial preliminary investigation. There is also a special rule in part 16, point 16, Article 483 of the Criminal Procedure Code, which was applicable during 2022, that "in exceptional cases, the Prosecutor General has the power to instruct another preliminary investigation body to continue the investigation in the proceedings conducted by the investigator of one preliminary investigation body, if it is necessary as a last resort to ensure a proper, comprehensive and impartial preliminary investigation." This provision establishes an exceptional nature of the possible transfer of cases from the ACC, but it does not provide for clear grounds for such a transfer. The ground "as a last resort to ensure a proper, comprehensive and impartial preliminary investigation" is subject to an extensive interpretation. As noted in the Guide, the rules have to set an exhaustive list of objective grounds for removing cases, i.e., grounds not based on personal preferences or other undue considerations (e.g., interference of political bodies). According to the general definition of the monitoring framework, criteria or grounds are considered clear if, in the assessment of the monitoring team, they are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body. The authorities noted that, in practice, the change of investigative subordination by the Prosecutor General as a last, exceptional measure existed for preventing situations of conflict of interests when, for instance, the investigative body carrying out criminal proceedings itself reports on the situation of a possible conflict of interests of the investigator of this investigative body or a person who is in close relations with the head of the investigative body.

No clear grounds are also established in the legislation for removing a case from one investigator to another within the ACC. According to Article 38, Part 1, Paragraph 13 of the Criminal Procedure Code, in case of a gross violation of the law during the criminal proceedings, the supervising prosecutor removes the investigator from participating in the given proceedings but cannot make a decision to appoint another person in his/her place. In this case, the head of the investigative body decides which of the investigators under his/her direct authority to assign to perform the preliminary investigation of criminal proceedings. In practice, the transfer of criminal proceedings from one investigator to another is carried out by the reasoned report of the investigator and the written instruction of the head of the investigative body. Moreover, if the investigator does not agree with this assignment of the head, he/she can submit objections to the supervising prosecutor, and the latter must decide in this regard within three days. The monitoring team considers that the ground of "a gross violation of the law" does not qualify as clear ground under the monitoring's definition.

Therefore, Armenia is not compliant with **element A**.

In 2022, the investigators of the Anti-Corruption Committee sent 307 criminal cases to another preliminary investigation body in accordance with the rules of the investigative jurisdiction established by the Criminal Procedure Code. During the same period, one criminal case, by the decision of the Prosecutor General of

the Republic of Armenia, was removed from the proceedings of the investigators of the Anti-Corruption Committee as an exceptional measure and transferred to the investigators of another preliminary investigation body - the Investigative Department of the National Security Service according to paragraph 16 of part 16 of Article 483 of the Criminal Procedure Code. In 2022, the ACC investigator was removed from criminal proceedings in six cases, and the preliminary investigation of these criminal cases was assigned to other investigators of the ACC. As there were no cases of transfer of proceedings outside legally established grounds, the country complies with **element B**.

Benchmark 8.1.3.

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

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

In the system of the Prosecutor General's Office, there is a Department for Supervision over Legality of Pre-trial Proceedings in the Anti-Corruption Committee. It was formed in connection with the creation of the Anti-Corruption Committee. The Department oversees the legality of the preliminary investigation carried out by the Anti-Corruption Committee and supports the prosecution in court in these cases. Armenia is compliant with both elements of the benchmark.

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

Background

According to the authorities, the identification and tracing of criminal proceeds in corruption cases is conducted by the Anti-Corruption Committee. However, benchmarks of this indicator require that there is a dedicated body, unit or group of specialists to perform these functions. It means that there should be an agency, a unit within the agency, or specialized staff that deals exclusively with these functions and does not perform other duties. No such agency, unit, or specialists exists in Armenia – neither for the identification and tracing of criminal proceeds nor for the management of seized and confiscated assets.

In the system of the Prosecutor General's Office of the Republic of Armenia, there is a specialized Department for the Confiscation of Property of Illegal Origin, which, on the basis of the Law on Civil Forfeiture of Illicit Assets, performs functions aimed exclusively at the confiscation of property of illegal origin. This activity is carried out outside of criminal proceedings. By the Order of the Prosecutor General, the relevant departments of the Prosecutor General's Office are instructed to send monthly to the Department for the Confiscation of Property of illegal Origin information on corruption crimes and those crimes that may result in income of illegal origin (for example, drug trafficking). As a result, prosecutors of the Department for the Confiscation of Property of Illegal Origin file a civil lawsuit with a claim for the recovery of property of illegal origin.

Assessment of compliance

The Department for Confiscation of Illicit Assets was established in 2020 to conduct financial investigations to trace and recover assets. However, its competence was restricted to the recovery of assets in civil proceedings. There were no specialised practitioners or entities responsible for the identification, tracing, or management of recovered assets in criminal corruption cases, as required by this indicator.

Benchmark 8.2.1.

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

In 2022, there were no specialised practitioners or entities responsible for the identification, tracing, or management of recovered assets in criminal corruption cases, as required by the benchmark.

Benchmark 8.2.2.

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

In 2022, there were no specialised practitioners or entities dealing with the management of seized and confiscated assets in criminal cases, including corruption, as required by the benchmark.

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

Background

The specialised anti-corruption investigative body in Armenia is the Anti-Corruption Committee which was set up in 2021 based on the special law. Oversight over pre-trial investigation and prosecution of corruption cases in court is conducted by the specialised department of the Prosecutor General's Office that is regulated by the Law on the Prosecutor's Office.

Assessment of compliance

The head of the Anti-Corruption Committee, who held the position during this monitoring in 2023, was appointed in 2021, and no new selection was held during the evaluation period in 2022. Accordingly, the relevant benchmark was not applicable, but the report contains suggestions for improvement of the existing procedure. The procedure for pre-term dismissal of the ACC head was found to be deficient: while the grounds for dismissal were included in the law, several of them were not clearly formulated; the law also did not regulate the main steps for the dismissal. There was no special procedure for appointing the Head of the Prosecutor General's Office Department for Supervision over Legality of Pre-Trial Proceedings in

the Anti-Corruption Committee. The only peculiarity was that before the appointment, the candidate had to pass an integrity check, which is a commendable practice.

Benchmark 8.3.1.

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

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

The current head of the Anti-Corruption Committee was appointed in 2021, and no new selection was held during the evaluation period in 2022. As this benchmark is about the practice that happened in the assessment period, all listed elements are not applicable**.** However, the monitoring team provides the analysis below for a possible improvement of the procedure in the future.

The open and competitive selection of the Head of the Anti-Corruption Committee is regulated by the Law on the ACC that defines the main steps of the process, including setting up the Competition Board, its operation, announcing an open competition for the position, assessment of candidates in several stages, proposing to the Government two or three candidates for the position, appointment by the Cabinet of Ministers.

According to the ACC Law, only the following information on the selection process should be published online: an announcement about the open competition and the list of winning candidates selected by the Competition Board. The following information on the outcomes of the main steps of the procedure is not published: the list of applicants who were admitted to the competition following the initial review of documents; results of the integrity checks of the candidates; results of the assessment during the interviews; assessment of candidates by the individual members of the Competition Board.

The online advertisement of the vacancy is stipulated in the ACC Law. No restrictions for eligible candidates to apply are provided in the ACC Law. However, the term of 10 days to submit an application set in the Law may be considered too short.

During the interviews, the Competition Board is supposed to check the leadership and managerial skills required for holding the position and other personal characteristics (self-control, conduct, the ability to listen, communication skills in official and non-official relations, the ability to analyse etc.), as well as the skills of handling the situation spontaneously within a short period of time-based analysis of a legal issue that is given during the interview. The scoring of candidates under the 100-point system is regulated by the decision of the Competition Board.[44] Each Board member assigns points to the candidates under the following three assessment categories: 1) personal qualities (maximum 30 points); integrity (maximum 40 points); and 3) professional experience and skills (maximum 30 points). The candidate's score obtained as a result of the competition is considered to be the sum of the scores of all members of the Board. Three candidates who received the maximum number of points are included in the list of winners of the competition. The merit-based selection is provided at the level of the Competition Board, while the final

[44] Decision No. 2 of 26.07.2021, https://www.gov.am/u_files/file/Voroshum-03_08_21.pdf.

decision of the Government to select one of three candidates is discretionary and can be guided by political or other considerations. It would be preferable to limit the Board's proposal to one candidate who received the highest score and satisfied the integrity criteria.

Benchmark 8.3.2.

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

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

This benchmark is based on the assessment of the ACC Law. As foreseen by **element A**, the ACC Law (Article 24) defines the grounds for dismissal of the head of the Anti-Corruption Committee and it includes the following: attaining the maximum age for holding the position; loss of citizenship of the Republic of Armenia; being declared as having no active legal capacity, as missing or dead; death; court judgment of conviction entered into legal force; decision on terminating criminal prosecution on non-acquittal grounds or on not initiating criminal prosecution; resignation. The second set of grounds includes the following: a disease or physical impairment which hinders or will hinder the performance of duties over a long period of time; any of the restrictions prescribed by part 2 of Article 15 of the ACC Law have emerged; violating the restrictions and incompatibility requirements prescribed by the Law "On public service"; violating the prohibition to engage in political activities; "facts that he or she did not comply with the specified requirements at the time of his or her appointment have emerged."

However, some of the grounds for dismissal are not clear. One of the grounds refers to part 2 of Article 15 of the ACC Law, which includes a broad list of restrictions, including "a criminal prosecution has been initiated" and "is a prosecutor, investigator who has received - during the last three years - a severe reprimand or a graver disciplinary penalty prescribed by law, irrespective of whether the disciplinary penalty has been expired or cancelled under the established procedure." The first ground allows dismissing the ACC head by starting any criminal investigation against him or her. The second ground allows the dismissal through the application of a disciplinary penalty. Unlike another ground in Article 24 (non-compliance "with the specified requirements at the time of his or her appointment have emerged"), which is linked to the situation at the time of selection and cannot be used for newly emerged circumstances, these grounds, when read literally, allow applying restrictions in Article 15, part 2, when they appear during the tenure of the ACC head.

The ground "violating the prohibition to engage in political activities" is also ambiguous. The authorities referred to Article 9 of the ACC Law that prohibits employees of the ACC from being a member of any party or engaging in political activities in any other way and requires that employees of the ACC show political restraint and neutrality under all circumstances. If being a member of a party is sufficiently specific, the other conditions are too broad. Thus, Armenia is not compliant with **element B**.

Contrary to the requirement of **element C**, the law does not regulate the main steps for the dismissal of the Anti-Corruption Committee's head. Some of the grounds are objective but still require a formal decision of the Government. Other grounds allow interpretation (for example, violating the prohibition to engage in political activities), and the law should stipulate who may initiate the consideration of the dismissal and

how it is conducted and resolved. The steps are not regulated; therefore, no publication of outcomes is provided contrary to **element D**.

Benchmark 8.3.3.

	Compliance
There were no cases of dismissal of the head of the anti-corruption investigative body, unit, or a group of investigators outside of the procedure described in benchmark 3.2	N/A

There was no dismissal of the Anti-Corruption Committee's head in 2022. The benchmark is not applicable.

Benchmark 8.3.4.

The head of the anti-corruption prosecutorial body or unit is selected through the following selection procedure:

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

There is no special procedure for appointing the Head of the Prosecutor General's Office Department for Supervision over Legality of Pre-Trial Proceedings in the Anti-Corruption Committee. The only peculiarity was that before the appointment, in accordance with the procedure established by law, the person passed integrity check. The procedure for promotion to senior prosecutorial positions is regulated by the Law on the Prosecutor's Office (see the assessment of the promotion procedures in the prosecutor's office in Performance Area 7). There is a separate promotion list that includes candidates for the heads of the structural subdivisions of the General Prosecutor's Office (which includes PGO departments), the Prosecutor of the city of Yerevan, and the Deputy Military Prosecutor. No special procedure is provided for the candidates for the PGO Department dealing with corruption cases. Armenia is compliant only with **element A** of the benchmark.

Indicator 8.4. The specialised anti-corruption investigative and prosecutorial bodies have adequate powers and work transparently

Background

The Anti-Corruption Committee was authorised to perform undercover investigative actions according to the Criminal Procedure Code and carry out operational investigative activities according to the Law on Operational Investigative Activities. Access to tax, customs, and bank data was obtained through a seizure of documents and items containing banking or related secrets, as well as the demand for information.

Assessment of compliance

No issues were reported in the ACC's ability to implement its powers to use special investigative techniques and conduct undercover operations, as well as to access tax, customs, and bank data. Detailed statistics related to the work of the anti-corruption investigators and prosecutors was published online annually as a special report of the Prosecutor General.

Benchmark 8.4.1.

An anti-corruption investigative body, unit, or a group of investigators, which specialises in investigating corruption, has in legislation and practice:

Element	Compliance
A. Powers to apply covert surveillance, intercept communications, and conduct undercover investigations	✓
B. Powers to access tax, customs, and bank data - directly or through a court decision	✓

The Anti-Corruption Committee is authorised to perform undercover investigative actions according to the Criminal Procedure Code and carry out operational investigative activities according to the Law on Operational Investigative Activities. The undercover investigative actions include: indoors surveillance (covert surveillance); outdoor surveillance; monitoring of mail correspondence and other non-digital communication; monitoring of digital, including telephone communication; monitoring of financial transactions; simulation of taking or giving a bribe. As a part of operational measures, the ACC is authorised to conduct the following: an operational survey, collection of operational information, collection of samples for comparative studies, control of procurement, controlled delivery and procurement, examination of objects and documents, external surveillance, internal (covert) surveillance, identity detection, research of buildings, structures, terrain, buildings, and vehicles, control of correspondence and other non-digital communications, control of digital, including intercept communications, operational implementation, operational experiment, control of financial transactions, imitation of receipt or giving bribes. From the information provided in writing and during the on-site visit, it appears that these powers were implemented in practice, and thus, the country is compliant with **element A**.

As regards the powers of the Anti-Corruption Committee to access tax, customs, and bank data, it is obtained through a seizure of documents and items containing banking or related secrets, as well as the demand for information. According to part 5 of Article 26 of the Criminal Procedure Code, during the proceedings, information concerning a person containing medical (with the exception of seeking medical help and service or data on its receipt), notarial, bank, or related secrets may be collected only through a court decision in cases and in accordance with the procedure established by law. Armenia is compliant with **element B**.

Benchmark 8.4.2

Detailed statistics related to the work of the anti-corruption investigators and prosecutors are published online at least annually, including:

Element	Compliance
A. A number of registered criminal proceedings/opened cases of corruption offences	✓
B. A number of persons whose cases were sent to court disaggregated by level and type of officials	✓
C. A number of terminated investigations with grounds for termination	✓

The authorities refer to the annual report published on the website of the Prosecutor General's Office (LINK). It contains detailed information on the investigation and prosecution of corruption crimes, including a number of registered criminal proceedings/opened cases (**element A**), a number of persons whose cases were sent to court (**element B**), and a number of terminated investigations (**element C**). The ACC also publishes annual reports on its activity (https://anticorruption.am/hy/pages/show/report).

Assessment of non-governmental stakeholders

The non-governmental stakeholders provided the following recommendations for improving the independence and operation of the specialized anti-corruption bodies:

1. Remove the possibility for the head of the Anti-Corruption Committee to be appointed to the position twice in a row while extending his/her term in office.
2. Revise the procedure for appointing and dismissing the deputy heads of the Anti-Corruption Committee, excluding the participation of the executive and reserving this power to the ACC head.
3. Establish specified procedures and guarantees for the disciplinary proceedings of the Anti-Corruption Committee officials, as well as the requirement for an independent disciplinary committee to organize the disciplinary proceedings.
4. Increase accountability and transparency of the work of the Anti-Corruption Committee by improving reporting to the Government and the National Assembly, submitting interim reports when needed.
5. The ACC should improve its communication about high-profile cases, as often, after announcing the case investigation, the ACC does not follow up and inform the public about the outcomes of the investigation.
6. Publish regular and disaggregated statistics on the work of the anti-corruption investigators, highlighting the results of an investigation in high-level corruption cases. Publish reports, including reports of the Prosecutor General, on the investigation and prosecution of corruption cases in an open data format to facilitate access and use of data.
7. Increase the number of autonomous positions of the Committee and the number of positions intended for persons performing operative-investigative functions.
8. Build the capacity of the Anti-Corruption Committee through continuous training of its employees.
9. Ensure adequate premises, material and technical supply of the Committee, to create its territorial units.
10. Increase the number of prosecutors dealing with cases of the Anti-Corruption Committee.

11. Provide continuous training to the specialised prosecutors to develop their capacity to supervise the pre-trial criminal proceedings carried out by the Anti-Corruption Committee.

The stakeholders also recommended limiting the discretion of the Prosecutor General in dealing with corruption cases and detaching to a certain extent the anti-corruption prosecutors from the general centralised system of the PGO, for example, by designating a special Deputy Prosecutor General who would be selected through an open competitive process.

As to the selection of the ACC head, stakeholders welcomed the open process that included observers from NGOs and international partners, the US Embassy in Armenia in particular, who could ask questions to the candidates and present their observations. However, the stakeholders believed that the selection procedure was not optimal due to a limited number of qualified candidates and insufficient public promotion of the competition to attract more qualified candidates, which resulted in the selection of the former head of the Special Investigative Service as the head of the ACC. As the pool of candidates for the ACC head was narrow, the selection was not genuinely competitive.

9 Enforcement of Corruption Offences

The liability for corruption offences was enforced, but the number of convictions in 2022 was low. There was only one case of conviction of a high-level official (a judge) and no cases of confiscating corruption proceeds. There were no convictions for money laundering with corruption as a predicate offence or standalone money laundering. Civil confiscation of property of illicit origin (unjustified assets) was a new promising instrument that has been actively enforced, with the first confiscation orders expected in 2023. Another important step was the introduction of the criminal liability of legal persons by the new Criminal Code enacted in 2022. The annual report of the Prosecutor General on the prosecution of corruption crimes was a good practice example of collating and publishing criminal statistics; the report's usability could be improved by publishing it in an open data format.

Figure 9.1. Performance level for Enforcement of Corruption Offences is average

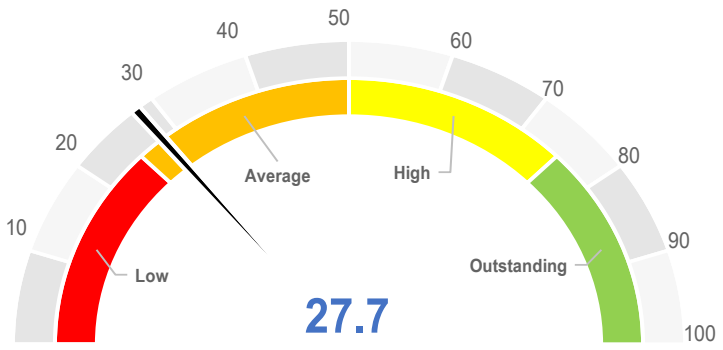
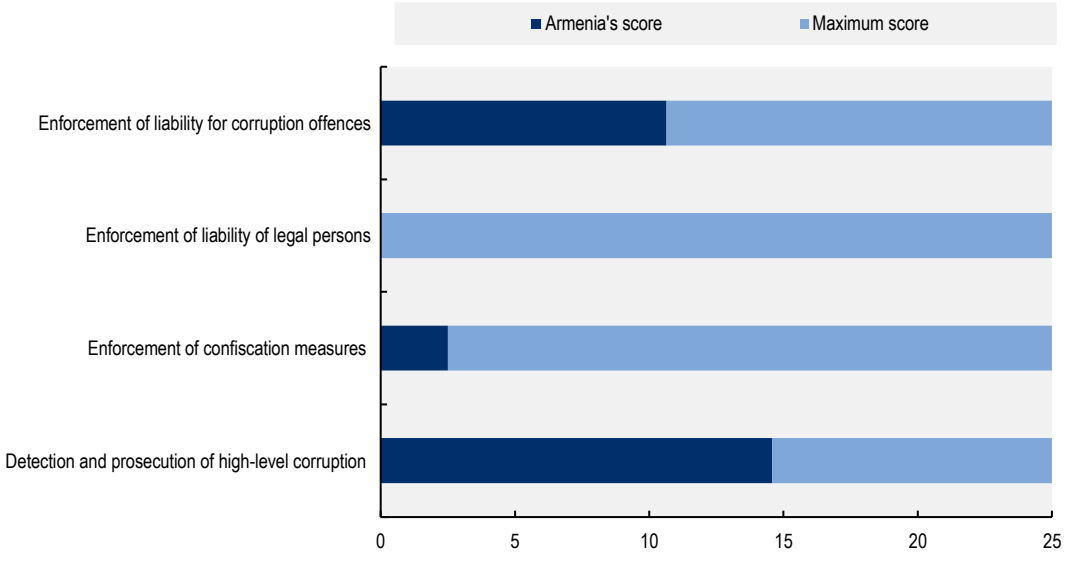


Figure 9.2. Performance level for Enforcement of Corruption Offences by indicators



Indicator 9.1. Liability for corruption offences is enforced

Background

This indicator tracks the enforcement of corruption offences through criminal sanctions. In most cases, its benchmarks require that sanctions for offences be “routinely imposed,” meaning that the national authorities must provide at least three examples of specific cases of the first instance convictions delivered in 2022 for the respective offences.

Assessment of compliance

Enforcement statistics for 2022 showed that there were more convictions for active bribery than passive bribery in the public sector, which may indicate that more focus should be put on investigating offences of bribe-taking and solicitation by public officials. There were no convictions for bribery in the private sector, trafficking in influence, or illicit enrichment. Newly introduced civil confiscation of unjustified assets was actively pursued, with over 20 claims already filed in courts in the total amount of about 52 billion AMD; no court decisions on civil confiscation were delivered in 2022. No investigation of foreign bribery was started in 2022. There were also no convictions for money laundering with public sector corruption as a predicate offence and convictions for standalone money laundering, but reportedly, many cases of money laundering related to former public officials had been launched. Enforcement statistics on corruption offences were collected on the central level and published in the annual reports on the official website of the General Prosecutor's Office in a comprehensive manner (excluding only data on the confiscation measures applied). Recognizing that these specialized bodies are relatively newly established and that it takes time to conduct lawful investigations and secure judgments, the next few years will be more indicative of their effectiveness.

Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Active bribery in the public sector	✓
B. Passive bribery in the public sector	✓
C. Active or passive bribery in the private sector	X
D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe	✓
E. Bribery with an intangible and non-pecuniary undue advantage	X
F. Trading in influence	X

"Routinely imposed" means that for each **element (A-F)** the national authorities are required to provide at least three examples of specific cases of the first instance convictions delivered in 2022 for the respective offences. The Armenian authorities provided statistics on the total number of convictions (see below) and examples of sanctions routinely imposed for active and passive bribery (elements A and B) as well as offering or promising a bribe, bribe solicitation or acceptance of an offer/promise of a bribe as stand-alone offences (element D). Only one case was provided for bribery with an intangible and non-pecuniary undue advantage (element E), and no cases were provided for active or passive bribery in the private sector and trading in influence.

Table 9.1. Statistics on the total number of convictions in 2022

Number of persons convicted for:	Year
Active bribery in the public sector	51
Passive bribery in the public sector	5
Active bribery in the private sector	0
Passive bribery in the private sector	0
Offering or promising a bribe as a stand-alone offence	17
Bribe solicitation or acceptance of an offer/promise of a bribe as a stand-alone offence	0
Bribery with an intangible and non-pecuniary undue advantage	2
Trading in influence	0

Source: Provided by the Armenian authorities.

Benchmark 9.1.2.

	Compliance
Sanctions (measures) are routinely imposed for criminal illicit enrichment or non-criminal confiscation of unexplained wealth of public officials (unjustified assets)	X

Illicit enrichment is punishable under Article 443 of the 2022 Criminal Code of Armenia (Article 310.1 of the 2003 Criminal Code). There were no convictions under these articles in 2022.

In 2020, the Law on Confiscation of Property of Illicit Origin was adopted. It introduced civil confiscation of unjustified assets of public officials. The Law is enforced by a dedicated department of the Prosecutor General's Office. At the time of onsite visit, after an investigation into property of illicit origin, 11 claims were submitted to the court of first instance of general jurisdiction of the city of Yerevan and 10 more claims – to the Anti-Corruption Court. All claims were accepted for proceedings and were being examined in the Anti-Corruption Court. The amount subject to confiscation under the 21 claims was about 52 billion AMD; 296 properties were subject to possible confiscation (with a total value of about 34 billion AMD). No court decisions on civil confiscation were delivered in 2022.

As there were no sanctions for illicit enrichment imposed or unjustified assets confiscated in 2022, Armenia is not compliant with the benchmark.

Benchmark 9.1.3.

	Compliance
There is at least one case of the started investigation of foreign bribery offence	X

The authorities provided one example of a case in which the investigation was started in November 2022 based on Article 436, part 1 of the Criminal Code (giving of a bribe) and is still pending. The case concerned an attempted bribery committed in November 2020 by a truck driver who offered a small amount bribe to the Russian Federation Ministry of Interior's official to avoid administrative liability. In January 2023, the criminal proceeding was sent to the court with an indictment. While the case concerns the bribery of a foreign public official, it does not qualify as a foreign bribery offence under Article 16 of the UN Convention Against Corruption because the described criminal act was not conducted "in order to obtain or retain business or other undue advantages in relation to the conduct of international business." Armenia is not compliant with the benchmark.

Benchmark 9.1.4.

Sanctions are routinely imposed for the following offences:

Element	Compliance
A. Money laundering with possible public sector corruption as a predicate offence	X
B. Money laundering sanctioned independently of the predicate offence	X

The authorities provided one example of a money laundering case with possible public sector corruption as a predicate offence. As a minimum of three cases are required for compliance, Armenia is not compliant with **element A**. Moreover, the case example which was provided seems to be not eligible because the court acquitted the accused, and the sanction was not imposed. The authorities noted that an unprecedented number of money laundering cases were under investigation in 2023. Almost all corruption cases investigated against high-ranking officials had a money laundering element, which, according to the authorities, could result in a high number of respective convictions.

There were no convictions for money laundering sanctioned independently of the predicate offence in 2022 (**element B**). The authorities provided the position of the Court of Cassation (the highest court in Armenia), stating that money laundering may be punished independently of the predicate offence.[45] During the on-site visit, judges of the Anti-Corruption Court and prosecutors confirmed that the conviction for the predicate offence is not required and the conviction for standalone money laundering is possible in Armenia.

Benchmark 9.1.5.

	Compliance
In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held	X

The authorities referred to the Criminal Code that includes as a separate punishment the deprivation of the right to hold public office. If applied, such punishment results in the dismissal of public officials. However, it may be applied only if provided as an available sanction under a specific criminal offence. Deprivation of the right to hold certain positions or exercise certain activities is not provided under all corruption offences and, when provided, in some cases, is an optional and alternative punishment that is discretional for the court to impose.

The authorities noted that, in practice, the Prosecutor General's Office takes measures to suspend from office all persons accused of corruption crimes and requests the court to impose the punishment of deprivation of the right to hold certain positions or engage in certain activities. If the court does not impose such a punishment, the prosecutor submits a petition to the body authorized to dismiss the person from

[45] "The absence of a previous crime excludes the existence of the crime of legalization of proceeds obtained through criminal means, therefore, when passing a guilty verdict in similar cases, the court must first consider the case of the previous crime as confirmed, as well as money laundering the fact that the subject property was acquired as a result of a previous crime. The Court of Cassation also considers it necessary to emphasize that in this case, it is not necessary to have a legally binding judgment regarding the preceding crime, and it is also not necessary that the person accused of legalizing the income obtained through criminal means has anything to do with the preceding crime." Source: Decisions of the RA Court of Cassation on money laundering: No. EKD/0161/01/15 of November 7, 2019, No. EED/0054/01/15 of April 14, 2021, No. EED/0054/01/15 of April 14, 2011, February 24, 2011 according to the legal positions expressed in decision No. EKD/0090/01/09.

office, requesting to terminate the public office of the convicted person. While this is a positive practice, it cannot change the compliance rating because such a punishment was not available for all types of corruption offences, and the request to dismiss a convicted person was not mandatory (see also the next paragraph).

There are other laws that require dismissal from public office in case of conviction. For example, the Civil Service Law (Article 37) stipulates that the civil servant should be dismissed if a guilty verdict against him enters into force. However, this requirement does not extend to convictions sanctioned with a fine, which is possible under some corruption offences. Therefore, there is no automatic dismissal in case of conviction for a corruption offence in all cases. According to Article 14 of the Public Service Law, persons convicted of a crime shall not have the right to hold a public service position. This provision contradicts Article 37 of the Civil Service Law, which regulates one type of public service and, therefore, can be considered as a special law that will have priority over the general law. Other laws on certain types of public service (for example, on judges and prosecutors) provide for the termination of office in case of conviction.

For the above reasons, Armenia is not compliant with the benchmark.

Benchmark 9.1.6.

There are safeguards against the abuse of special exemptions from active bribery or trading in influence offences:

Element	Compliance
A. Any special exemption from active bribery or trading in influence offence is applied taking into account circumstances of the case (that is not applied automatically)	✓
B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own'	✓
C. The special exemption is not allowed when bribery is initiated by the bribe-giver	✓
D. The special exemption requires active co-operation with the investigation or prosecution	✓
E. The special exemption is not possible for bribery of foreign public officials	✓
F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor	✓

The new Criminal Code of the Republic of Armenia adopted in 2021 no longer includes special exemptions from active bribery or trading in influence offences. The general release from liability in case of active repentance is still allowed for corruption offences, but it is outside of the benchmark. Armenia is compliant with all elements of the benchmark.

Benchmark 9.1.7.

No case of corruption offence by a public official is terminated because of:

Element	Compliance
A. The expiration of the statute of limitations	X
B. The expiration of time limits for investigation or prosecution	✓

The authorities provided three case examples when the proceedings in corruption cases were discontinued due to the expiration of the statute of limitations, which means that **element A** was not compliant. According

to the authorities, no corruption cases were terminated in 2022 because of the expiration of the time limit for investigation or prosecution making Armenia compliant under **element B**.

Benchmark 9.1.8.

Enforcement statistics disaggregated by the type of corruption offence is annually published online, including information on:

Element	Compliance
A. Number of cases opened	✓
B. Number of cases sent to the court	✓
C. Number of cases ended with a sentence (persons convicted)	✓
D. Types of punishments applied	✓
E. Confiscation measures applied	X
F. Types and levels of officials sanctioned	✓

Statistics on corruption cases are published in the annual reports on the official website of the General Prosecutor's Office of RA (LINK). This includes information on the number of cases opened, sent to the court, convicted persons, types of punishments, and types and levels of officials sanctioned. The analysis of the report for 2022 shows that the information required by the benchmark was published, except for information on confiscation measures applied (**element E**).

Benchmark 9.1.9.

	Compliance
Enforcement statistics on corruption offences is collected on the central level	✓

As noted in benchmark 9.1.8, statistics in corruption cases are collected by the General Prosecutor's Office of RA on the central level and published in the annual reports on the official website. Armenia is compliant with the benchmark.

Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

Background

The new RA Criminal Code, adopted in 2021 and enacted in July 2022, introduced a criminal liability of legal persons for criminal offences, including corruption. However, according to the final provisions of the new Code, the corporate liability provisions enter into force on 1 January 2023. No other provisions on the liability of legal persons for corruption existed in 2022. Armenia is, therefore, not compliant with the benchmarks of this indicator.

Assessment of compliance

The Criminal Code enacted in 2022 introduced a quasi-criminal liability of legal persons for corruption, providing that the following “criminal-legal enforcement measures” could be imposed on a legal entity: a fine; a temporary suspension of the right to exercise certain type of activity; a compulsory liquidation; a

ban to conduct activity within the territory of the Republic of Armenia. The amount of the fine must be proportionate to the gravity of the crime but cannot exceed 20 percent of the legal entity's gross income during the year preceding the completion of the crime. Non-governmental stakeholders were concerned that this may be an insufficient punishment, making sanctions not dissuasive. A due diligence defence was not provided, but the Code required taking into consideration several factors at sentencing, including causes and conditions that have contributed to the crime, the measures undertaken by the legal entity aimed at the neutralization of the consequences of the crime, legal interests of bona fide participants or shareholders of a legal entity who were not and could not be aware of the criminal offence, and circumstances characterising the legal entity.

Benchmark 9.2.1.

	Compliance
The liability of legal persons for corruption offences is established in the law	X

The new corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.2.

	Compliance
The liability of legal persons for corruption offences is autonomous that is not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted, or convicted	X

The new corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.3.

	Compliance
The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including by taking into account the amount of the undue benefit paid as a bribe or received as proceeds	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.4.

	Compliance
The law provides for non-monetary sanctions (measures) applicable to legal persons (for example, debarment from public procurement or revocation of a license)	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.5.

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

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Benchmark 9.2.6.

The following sanctions (measures) are routinely applied to legal persons for corruption offences:

Element	Compliance
A. Monetary sanctions	X
B. Confiscation of corruption proceeds	X
C. Non-monetary sanctions (for example, prohibition of certain activities)	X

The corporate liability provisions entered into force on 1 January 2023, which is outside of the evaluation period. No other provisions on the liability of legal persons for corruption existed in 2022.

Indicator 9.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Authorities provided evidence of routine application of confiscation of corruption proceeds (all examples concerned money used as bribes) but not of instrumentalities. There was no evidence of enforcement in 2022 of more sophisticated confiscation measures, like confiscation of indirect proceeds, mixed proceeds, or non-conviction based confiscation. The monitoring team welcomed the implementation of a new instrument of civil confiscation of unjustified assets. The high number of lawsuits filed in court was a promising sign that the new instrument could be effectively enforced and result in the confiscation of significant amounts of unexplained wealth of public officials.

Benchmark 9.3.1.

Confiscation is routinely applied regarding:

Element	Compliance
A. Instrumentalities of corruption offences	X
B. Proceeds of corruption offences	✓

The authorities provided three examples of cases where money used as a bribe was confiscated by the first instance court decisions delivered in 2022 in corruption cases. The bribe is considered proceeds, not an instrumentality of offence. Therefore, Armenia is not compliant with **element A** and compliant with **element B**. One case concerned bribing in connection with elections, and two other cases involved bribes to police patrol officers.

Benchmark 9.3.2.

	Compliance
Confiscation orders in at least 50% of corruption cases are fully executed	X

Authorities informed that in 12 convictions issued by the court of first instance in 2022, in addition to the punishment imposed, the amount that was the subject of a bribe was also confiscated according to Article 121 of the Criminal Code of the Republic of Armenia. The authorities did not provide information on how many confiscation orders in these corruption cases were fully executed. Armenia is not compliant with the benchmark.

Benchmark 9.3.3.

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

Element	Compliance
A. Confiscation of derivative (indirect) proceeds of corruption	X
B. Confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	X
C. Confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	X
D. Confiscation of mixed proceeds of corruption offences and profits therefrom	X

The authorities did not provide information on at least one case where any type of confiscation measures listed in the benchmark were applied. Therefore, all elements are not compliant.

Benchmark 9.3.4.

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

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

In 2021, 21 lawsuits seeking confiscation of property of illicit origin were filed in court by the specialised prosecutor's office department under the new law enacted. However, no judgments were delivered in 2022. The monitoring team welcomes the implementation of a new instrument of civil confiscation of unjustified assets. The high number of lawsuits filed in court is a promising sign that the new instrument will be effectively enforced and result in the confiscation of significant amounts of unexplained wealth of public officials. As the non-conviction based confiscation was not applied at least once in 2022, Armenia is not compliant with **element A**.

"Extended confiscation" in **element B** means criminal confiscation of the assets of the convicted person and informed third parties beyond the proceeds and instrumentalities of the corruption offence, provided that the value of such assets does not correspond to their lawful income. The legislation of Armenia does not include such an instrument, which means non-compliance with this element.

Benchmark 9.3.5.

Measures are taken to ensure the return of corruption proceeds

Element	Compliance
A. The return of corruption proceeds from abroad happened at least once	X
B. The requests to confiscate corruption proceeds are routinely sent abroad	X

There were no cases of return of corruption proceeds from abroad in 2022. According to the authorities, the Department for Confiscation of Property of Illicit Origin of the RA Prosecutor General's Office sent 49 official requests abroad to obtain information about property, including 13 requests sent through the CARIN network (Camden Asset Recovery Inter-Agency Network). However, these requests concerned information about the property and were not requests to confiscate corruption proceeds. Armenia is not compliant with both elements of the benchmark.

Indicator 9.4. High-level corruption is actively detected and prosecuted

Background

"High-level corruption" in this monitoring means corruption offences that meet one of the following criteria: A. Involve high-level officials in any capacity punishable by criminal law (for example, as masterminds, perpetrators, abettors, or accessories). B. Involve substantial benefits for officials, their family members, or other related persons (for example, legal persons they own or control, political parties they belong to). A substantial benefit means a pecuniary benefit that is equal to or exceeds the amount of 1,000 monthly statutory minimum wages (or the equivalent of the minimum wage if it is not applicable) fixed in the

respective country on 1 January of the year for which data is provided. The methodology also provides a definition of "high-level officials."

Assessment of compliance

Enforcement of corruption offences against high-level officials remained very low in Armenia in 2022. There was only one case of conviction of a judge, and even in this case, a conditional release was applied to the perpetrator. A number of officials had immunity from criminal investigation and prosecution, but in 2022, it did not impede the criminal proceedings against such persons.

Benchmark 9.4.1.

	Compliance
At least 50% of punishments for high-level corruption provided for imprisonment without conditional or another type of release	X

According to the authorities, in 2022, there was one case of conviction for high-level corruption in the form of aggravated bribery offences punishable with imprisonment. The case was against a prosecutor. However, in this case, a conditional release was applied. Armenia is no compliant with the benchmark.

Benchmark 9.4.2.

Immunity of high-level officials from criminal investigation or prosecution of corruption offences:

Element	Compliance
A. Is lifted without undue delay	✓
B. Is lifted based on clear criteria	X
C. Is lifted using procedures regulated in detail in the legislation	✓
D. Does not impede the investigation and prosecution of corruption offences in any other way	✓

Immunity in Armenia is provided for the following officials and persons: deputies (members) of the National Assembly; President of the Republic; judges of the Constitutional Court and judges of the general jurisdiction courts; Human Rights Defender; members of the Central Election Commission; a candidate for the National Assembly Deputy and an elected Deputy before assuming his powers as a Deputy. According to the authorities, in 2022, there was one case of requesting and lifting immunity that concerned a judge. The request was submitted to the Supreme Judicial Council of the RA in a case investigated by the State Security Service under the offences of abuse of office and unjust court decisions.

The assessment of the information provided concerning this case illustrates that the immunity was lifted on the same day when the request was filed without an undue delay, as foreseen by **element A**. However, the legislation did not provide any criteria for lifting immunity contrary to **element B**. The procedure of lifting the immunity of judges is regulated in detail in the Judicial Code and regulations of the Supreme Judicial Council. The immunity did not impede the investigation and prosecution of the corruption offence in any other way. Armenia is compliant with **elements C-D**.

Benchmark 9.4.3.

	Compliance
No public allegation of high-level corruption was left not reviewed or investigated (50%), or decisions not to open or to discontinue an investigation were taken and explained to the public (50%)	✓

The monitoring team did not uncover any public allegations of high-level corruption that were left not reviewed or not investigated, or where a decision not to open an investigation or discontinue it was taken and not explained to the public. Armenia is compliant with the benchmark (100%).

Assessment of non-governmental stakeholders

The non-governmental stakeholders shared the opinion that cases of high-level corruption concerned only former government officials, and there were a few cases of investigation or prosecution against high-level officials in office. The stakeholders also recommended that the Prosecutor General's annual report on corruption include a section on the corruption offences committed by high-level officials.

Regarding the liability of legal persons, the non-governmental stakeholders recommended the following:

1. Change the Criminal Code to include a provision that the legal person can also be charged in case the crime was committed by persons who have de facto control over the legal person.
2. Revise the principles of applying the penalty prescribed in the Criminal Code by removing the ban for charging more than 20% of the annual gross revenue and assigning the penalty as a multiplier of the illegally acquired revenue.

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

THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The fifth round of monitoring under the Istanbul Anti-Corruption Action Plan assesses Armenia's anti-corruption practices and reforms against a set of indicators, benchmarks and elements under nine performance areas that focus on anti-corruption policy, prevention of corruption and enforcement. The report analyses Armenia's efforts to build anti-corruption institutions, its measures to detect, investigate and prosecute corruption cases and identifies areas for improvement. A follow-up report evaluating Armenia's progress in these areas will follow.

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