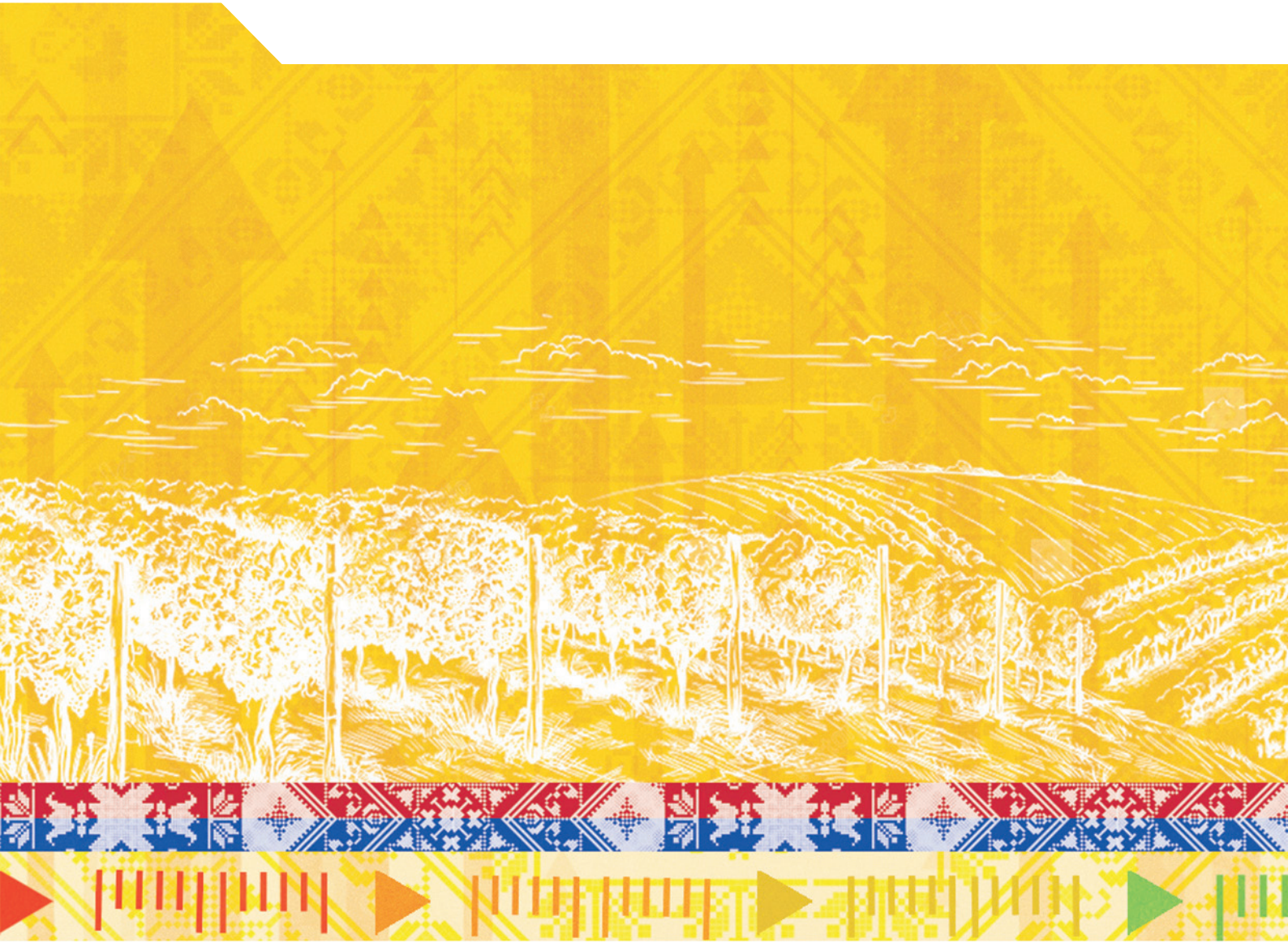
# Baseline Report of the Fifth Round of Monitoring of Anti-Corruption Reforms in Moldova

## THE ISTANBUL ANTI-CORRUPTION ACTION PLAN



OECD

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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 report assesses Moldova's performance against a set of uniform indicators, benchmarks, and elements under nine Performance Areas (PA) focusing on anti-corruption policy, prevention of corruption, and enforcement.

The monitoring team for Moldova included Mr. Andrei Furdui (Romania), Ms. Stana Maric (EBRD), Mr Evgeny Smirnov (EBRD), Mr. Davor Dubravica (Croatia), Mr. Cosmin Iordache (Romania) and Mr. Oleksandr Abakumov (Ukraine). Ms. Tanya Khavanska (OECD ACN) was the team leader for the monitoring. The ACN Secretariat team also included Mr. Erekle Urushadze (anti-corruption analyst), Ms Arianna Ingle (editorial support) and Ms. Tamara Shchelkunova (administrative assistant).

The coordination team from Moldova included Mr. Iulian Rusu, Director of the National Anti-Corruption Centre, Mr. Valeriu Cupcea, Head of the International Cooperation Directorate at the National Anti-Corruption Centre, and Ms. Stela Rusu, Deputy Head of the International Cooperation Directorate at the National Anti-Corruption Centre.

The assessment of Moldova was launched in December 2022. Moldova provided replies to the questionnaire with supporting materials in March 2023. The on-site visit to Chisinau took place on 25-28 April 2023 and included 13 sessions with governmental and non-governmental representatives, representatives of international organisations, and the business community. The draft report was sent to Moldova in July 2023 and the authorities provided comments on the draft report in August. Following several rounds of written comments, a bilateral consultation took place on 2 October and the monitoring report of Moldova was discussed and adopted at the ACN Plenary meeting on 3-5 October 2023. Throughout the process, the monitoring team received valuable contributions from Moldovan civil society organisations, including Institute for Development and Social Initiatives (IDIS) Viitorul, the Legal Resources Centre from Moldova, and the Centre for the Analysis and Prevention of Corruption.

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# Acronyms

| | |
|---|---|
| ACN | Anti-Corruption Network for Eastern Europe and Central Asia |
| AML/CFT | Anti-Money Laundering/Combatting the Financing of Terrorism |
| APO | Anti-Corruption Prosecution Office |
| ATU | Autonomous Territorial Unit |
| CAPC | Centre for Analysis and Prevention of Corruption |
| CARA | Criminal Asset Recovery Agency |
| CEO | Chief Executive Officer |
| CGC | Corporate Governance Code |
| COI | Conflict of interest |
| CSO | Civil Society Organisation |
| CVIS | Centre of Sociological, Politological and Psychological Analysis and Investigations |
| EBRD | European Bank for Reconstruction and Development |
| EU | European Union |
| CGC | Corporate Governance Code |
| GRECO | Group of States Against Corruption |
| GPO | General Prosecutor's Office |
| IAP | Istanbul Anti-Corruption Action Plan |
| JSC | Joint Stock Company |
| LPU | Law regulating procurement by utilities |
| MDL | Moldovan Lei |
| MoF | Ministry of Finance |
| MP | Member of Parliament |
| NAC | National Anti-Corruption Centre |
| NCFM | National Commission of the Financial Market |
| NIA | National Integrity Agency |
| NIAS | National Integrity and Anticorruption Strategy |
| NIJ | National Institute of Justice |
| NGO | Non-governmental organization |
| OECD | Organisation for Economic Cooperation and Development |
| OGP | Open Government Partnership |
| OSCE | Organisation for Security and Cooperation in Europe |
| PA | Performance Area |
| PG | Prosecutor General |
| PPA | Public Property Agency |
| PPL | Public Procurement Law |
| SE | State enterprise |
| SOE | State-owned enterprise |
| SCM | Supreme Council of Magistracy |
| SCP | Superior Council of Prosecutors |
| 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 normative framework for assessment derives from international standards and good practices based on a stocktake of the previous rounds of IAP monitoring highlighting achievements and challenges in the region.[1] Indicators evaluate anti-corruption policy, prevention of corruption, and criminal liability for corruption, with a focus on practical application and enforcement, particularly at high-level. [2]

The IAP 5th round of monitoring assessment framework includes nine Performance Areas (PAs),[3] with four indicators each and a set of benchmarks under each indicator. Benchmarks are further split into elements to ensure 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.[4] 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<br>OUTSTANDING | B<br>HIGH | C<br>AVERAGE | D<br>LOW |
|---|---|---|---|---|
| SCORE | 76-100 | 51-75 | 26-50 | <25 |

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

[2] The IAP 5th Round of Monitoring Assessment Framework and Guide.

[3] Performance Area 1: Anti-Corruption Policy; Performance Area 2: Conflict of Interests and Asset Declarations; Performance Area 3: Protection of Whistleblowers; Performance Area 4: Business Integrity; Performance Area 5: Integrity in Public Procurement; Performance Area 6: Independence of Judiciary; Performance Area 7: Independence of Prosecution Service; Performance Area 8: Specialised Anti-Corruption Institutions; Performance Area 9: Enforcement of Corruption Offences.

[4] For more information, see IAP 5th Round of Monitoring Assessment Framework.

# Executive summary

Moldova's current **anti-corruption policy documents** (PA 1) were developed based on a wide array of evidence, including analysis of the implementation of earlier documents, research by local CSOs and international organisations, public opinion surveys and (to a more limited extent) risk assessments. The documents include objectives and outcome and impact indicators but lack an estimated budget. The policy documents were adopted through a transparent and inclusive process involving consultations with and review of feedback from relevant public bodies and nongovernmental stakeholders (including publication of explanations regarding the proposals that were not accepted).

Only approximately half of the planned measures were fully implemented in 2022, but lack of funding has not been a major factor affecting the implementation rate (as just one measure could not be implemented for funding-related reasons). The Anti-Corruption Policy Service of the National Anti-Corruption Centre is the body responsible for the coordination and monitoring of policy implementation. The Service has only two staff members but appears to have generally coped well with its duties, providing the implementing agencies with consultation and guidance. The process of monitoring and evaluation of policy implementation has mostly been conducted in line with the relevant standards, although monitoring reports lack assessment based on impact indicators and information on funds spent on the implementation of individual measures.

Moldova's legislation contains definitions of private interest and **conflict of interest** (including actual and potential but not apparent COI) and establishes responsibilities for the reporting and resolution of COI (PA 2). The range of COI resolution methods available under the law is limited and does not include such options as divestment of asset-related interest, recusal, and resignation of the official in question. There are specific COI resolution methods for the officials with no direct supervisors but not for the members of collegiate state bodies. There are no specific regulations or rules tailored to the risks of specific public offices. Sanctions for various COI-related violations are in place, and they are applied in practice, although not to high-level officials. There is no practice of application of other COI enforcement measures, such as invalidation of decisions or contracts.

Moldova has a comprehensive system of **asset declarations** covering all relevant categories of public officials (and their family members) and most of the types of assets and interests required under the benchmarks. The declarations are filed through a centralised electronic system and are accessible to the general public. But information is not published in a machine-readable format and some information is withheld.

Verification of asset declarations is performed by the National Integrity Authority's integrity inspectors and includes examination of truthfulness and completeness of disclosure, as well as review for signs of conflict of interest and illicit enrichment. The powers of integrity inspectors are mostly adequate for the performance of these tasks. A large number of verifications are triggered by external complaints or notifications. On the negative side, there is no systematic practice of risk-based verifications. While the wide scope of verifications is commendable, the detection rate of violations (and consequently of sanctioning) is low.

Moldova's legislation guarantees **protection** to individuals who report corruption at their workplace (PA 3). The precondition of reporting in good faith and the public interest test are problematic. Protection extends to all relevant categories of whistleblowers, including those employed in the public and the private sectors, SOEs and defence and security institutions. Some important types of safeguards (such as protection of a whistleblower's identity and protection from retaliation at workplace) are in place, but others are not (such as protection of personal safety and release from liability linked with the disclosure). The law also does not contain provisions on consultation on protection, free legal aid or reinstatement (although it does entitle whistleblowers to compensation).

Whistleblowers can report internally at their workplace or to the designated public institution (the NAC), or they can opt to make a public disclosure under specific conditions. Not all public institutions have set up internal reporting channels in practice. There is no dedicated central electronic platform for reporting (although reports can be filed through the NAC website). Anonymous whistleblower reports are not allowed under the law, and individuals who report anonymously are not entitled to protection.

The responsibility for whistleblower protection is assigned to the People's Advocate (Ombudsman), but the institution has no unit or staff dealing exclusively with whistleblowers. The expansion of the institution's mandate to cover whistleblower protection has not been followed by an increase its human or financial resources or provision of relevant training. The People's Advocate also lacks appropriate powers to effectively review whistleblower appeals and provide protection.

The data on the application of whistleblower protection law in practice is very limited. The People's Advocate only received three applications in 2022 and none of these qualified for protection.

The **Corporate Governance Code** adopted (PA 4) by the National Commission for Financial Markets (NCFM) establishes the responsibility of Moldova's companies' boards for the management of risks (including corruption risks). Compliance with the Code is mandatory for the country's listed companies. There is, however, no institution with a clear mandate to enforce this provision and no effective monitoring of compliance in practice.

Companies applying for registration in Moldova are required to disclose information about their beneficial owners. This information is made available to the general public via a dedicated website free of charge, but the system lacks some key functionalities that would provide an appropriate level of transparency and facilitate the processing of large amounts of data. No effective sanctions are in place for the failure to provide beneficial ownership information or provision of false information, and enforcement appears weak.

The government informed that as of 1 July 2023 with the amendment of the AML/CFT Law (Law no. 66/2023), the beneficial owner's name, surname, country of residence is not anymore publicly available on the website of the Public Services Agency. These changes to the law were done to implement the EU Court of Justice's Decision (C37/20). The impact thereof will be considered during the next monitoring round.

Moldova currently has no dedicated institution for the handling of complaints by companies concerning the violation of their rights, although there was an initiative by the government in 2020 to set up such institution. After comments by the Venice Commission and the OSCE, the initiative was abandoned. As communicated by the People's Advocate, starting from August 2023, legal entities can also appeal to the People's Advocate (Ombudsman) for human rights violations.

Legislation does not require Moldova's SOEs to have independent members on their boards. There are no uniform rules regarding the selection of SOE board members and CEOs. This has affected the transparency of board and CEO appointments in SOEs in practice. However, on the positive side, CEOs in two of the country's five largest SOEs appear to have been selected through a transparent and merit-based procedure in 2022. Comprehensive compliance programs remain an exception in Moldova's largest SOEs, while publication of key information about the operation of these SOEs is patchy at best. As understood from the government, in May and June 2023 amendments have been adopted providing for

the appointment of independent board members at SOEs (see benchmark 4.1). These changes will be assessed during the next monitoring round.

The **public procurement** system (PA 5) in Moldova is the main mechanism for ensuring transparency, competition, and value for money in the acquisition of goods, services, and works by public entities. The public procurement system operates under the legal framework governed by the Law on Public Procurement and associated regulations. These laws aim to harmonize Moldova's procurement practices with international standards and principles, promoting fairness, efficiency, and integrity.

The Ministry of Finance is the primary governmental body in charge of public procurement policies and regulations, as well as the strategy for their development. The dedicated Service for Public Procurement Policies within the Ministry is responsible for development of legislative acts and regulatory framework on public procurement. The Ministry has created and maintains a nationwide e-procurement platform MTender, which provides electronic public procurement records. However, the system does not currently cover all procurement methods available under the law, while centralised publication of up-to-date procurement data remains a challenge and most information is not currently published in a machine-readable format.

The Public Procurement Agency (PPA), a specialised body subordinated to the Ministry is in charge of implementing the public procurement policy, whilst the State Treasury, also subordinated to the Ministry, is in charge of registering public contracts and making corresponding payments. The independent National Agency for the Resolution of Complaints is reviewing and taking decisions on complaints from participants in procurement processes and other parties concerned.

Moldova has implemented various measures to combat corruption in public procurement. However, there are gaps in terms of sanctions for violation of COI rules, both in law and in practice, while the provisions on mandatory debarment from public procurement of natural and legal persons convicted for corruption are not enforced effectively in practice.

Moldova has launched significant **judicial reforms** (PA 6) since the change of government in 2021 with many changes being too recent to evaluate their practical application. To ensure integrity of judiciary, a Pre-Vetting Commission has been set up in 2022 to conduct integrity checks of the candidates for the judicial governance body – the Superior Council of Magistracy. The work of the Commission has not been completed by the end of 2022, resulting in Council and most of its subsidiary bodies having limited functionalities. The amended legal basis which regulates the set up and functioning of the Council and its subsidiary bodies is mostly in line with international standards. However, this remains on paper until the appointment of the new members and relaunch of the Council's and its subsidiary bodies' full scope of work. Judges in Moldova are now appointed for life through an open competition; the Superior Council of Magistracy proposes candidates for appointment to the President who may reject them on clear grounds and providing an explanation. Disciplining of judges is well regulated, however, some grounds for disciplinary liability are still ambiguous, leaving room for discretionary interpretation. Other challenges persist, including that the judiciary is understaffed, the judges are underpaid, creating a high risk for corruption and a growing backlog of cases.

In Moldova, the **Prosecutor General** is selected and proposed for appointment by the Superior Council of Prosecutors (PA 7). Clear grounds for the dismissal were stipulated in the law, however, the main steps of the procedure were not regulated. There was no appointment or dismissal of Prosecutor General in 2022. The Superior Council of Prosecutors was the main body of the prosecutorial self-governance in Moldova. However, it was not composed of majority of prosecutors elected by their peers, and civil society representatives did not constitute more than one third of its composition. This was also the case with three sub-bodies of the Council. Vacancies for prosecutorial positions and promotions have been published online in 2022. Prosecutors were selected through competitions and based on merit. Grounds and procedure for disciplinary liability of prosecutors were stipulated in law, however some were too broad allowing an unlimited discretion of the decision-making body. Investigation into allegations of disciplinary

violations was separated from the decision-making in such cases. Budget and remuneration of prosecutors complied with the benchmarks; however, salaries of prosecutors have not changed since 2018 and cannot provide sufficient insulation from corruption risks.

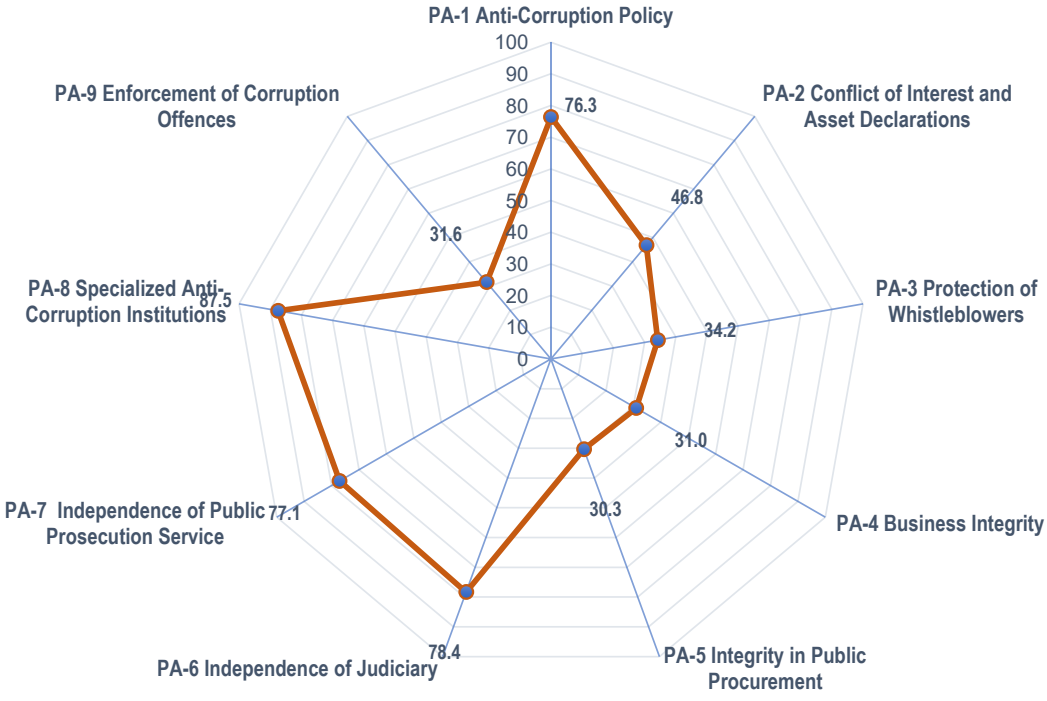
Moldova ensures **specialisation** of anti-corruption investigators and prosecutors (PA 8). Two key institutions – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office investigate corruption, with Anti-Corruption Prosecution Office focusing on high-level corruption; it also presents corruption cases in court. In 2022, the Chief Prosecutor of Anti-Corruption Prosecution Office was selected through a transparent and merit-based procedure. The competencies of the two agencies overlap, but Moldova is addressing this issue through the reform which took place outside of the monitoring timeframe in 2023. Moldova should ensure the focus on high-level corruption through this future reform. Identification, tracing, return and management of assets is performed by specialised officials of the Criminal Asset Recovery Agency, which has been active in 2022.

**Corruption offences,** especially for trading in influence and active bribery have been enforced in Moldova in 2022 (PA 9). However, enforcement on other offences should be stepped up, including passive bribery and bribery in the private sector. Moldova is yet to commence an investigation into a foreign bribery and had no cases of money laundering with corruption as a predicate offence or cases of illicit enrichment. Special exemption from active bribery and trading in influence leaves loopholes for abuse; statute of limitation for petty forms of corruption is too short and impedes investigations. Not all statistical data on enforcement is disaggregated and published online, and its collection is fragmented among various institutions. Moldova criminalises corruption perpetrated by legal persons. However, monetary sanctions are low and there have been only two cases of legal persons held liable for corruption in 2022. This is not enough to establish consistent enforcement practice. Confiscation is applied in Moldova; however, examples were not provided for more in-depth analysis of confiscation practices. Moldova does not track enforcement of high-level corruption cases. Table 2 shows Moldova's performance levels for all evaluated areas and the total number of points in each performance area.

### Table 2. Performance level and scores of Moldova by Performance Area

| Performance Area | Performance Level | Score |
|---|---|---|
| PA-1 Anti-Corruption Policy | A | 76 |
| PA-2 Conflict of Interests and Asset Disclosure | C | 47 |
| PA-3 Protection of Whistleblowers | C | 34 |
| PA-4 Business Integrity | C | 31 |
| PA-5 Integrity in Public Procurement | C | 30 |
| PA-6 Independence of Judiciary | A | 78 |
| PA-7 Independence of Public Prosecution Service | A | 77 |
| PA-8 Specialised Anti-Corruption Institutions | A | 88 |
| PA-9 Enforcement of Corruption Offences | C | 32 |

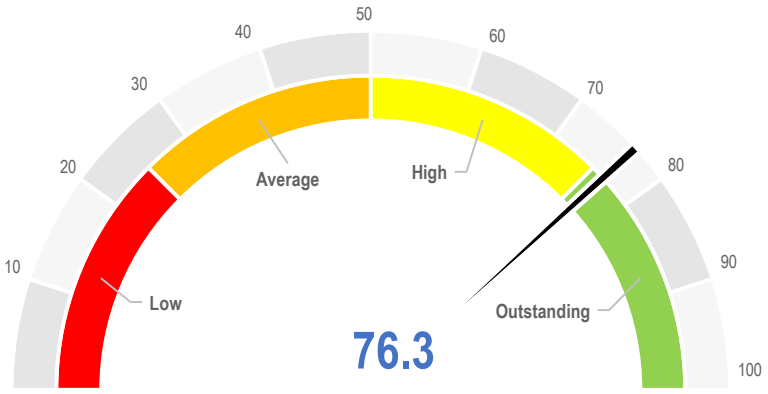
## Figure 1. Anti-Corruption Performance of Moldova by Performance Area.



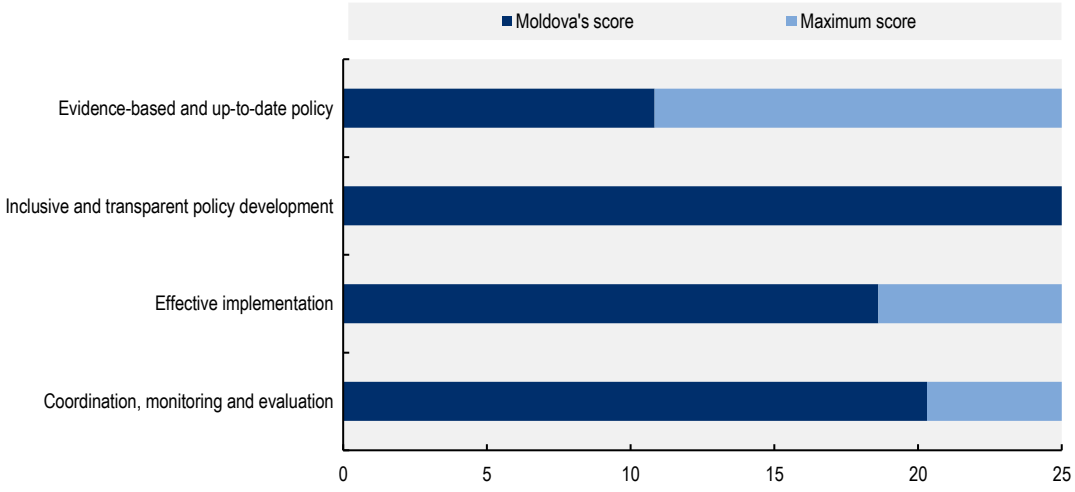
# 1 Anti-corruption policy

Moldova's current anti-corruption policy documents were developed based on a wide array of evidence, including analysis of the implementation of earlier documents, research by local CSOs and international organisations, public opinion surveys and (to a more limited extent) risk assessments. The documents include objectives and outcome and impact indicators but lack an estimated budget. The policy documents were adopted through a transparent and inclusive process involving consultations with and review of feedback from relevant public bodies and nongovernmental stakeholders (including publication of explanations regarding the proposals that were not accepted). Only approximately half of the planned measures were fully implemented in 2022, but lack of funding has not been a major factor affecting the implementation rate. The Anti-Corruption Policy Service of the National Anti-Corruption Centre is the body responsible for the coordination and monitoring of policy implementation. The Service has only two staff members but appears to have generally coped well with its duties, providing the implementing agencies with consultation and guidance. The process of monitoring and evaluation of policy implementation has mostly been conducted in line with the relevant standards, although monitoring reports lack assessment based on impact indicators and information on funds spent on the implementation of individual measures.

## 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*

Moldova's current National Integrity and Anticorruption Strategy (NIAS) was adopted by the Parliament in 2017 and originally covered the period between 2017 and 2020. However, in December 2021, the Parliament formally extended the NIAS through 2023. Previous two strategies covered the years 2005-2010 and 2011-2016 respectively. Throughout this report, the extended 2017-2023 NIAS will be used as a reference point for the assessment of the benchmarks related to the country's anti-corruption policy document.

### *Assessment of compliance*

## Benchmark 1.1.1.

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

| Element | Compliance |
|---|---|
| A. Analysis of the implementation of the previous policy documents (if they existed) or analysis of the corruption situation in the country | ✓ |
| 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 | X |

A – compliant. An analysis of the implementation of the 2011-2016 Strategy (which covered the period from 2011 through 2015) was used in the process of development of the current NIAS. Section 1 of the NIAS contains extensive references to the findings of the assessment of the implementation of the previous Strategy.

B – non-compliant. No national corruption risk assessment has been conducted. Last sectoral risk assessments conducted covered the spheres of healthcare (2014) and public procurement (2016). Their results were reflected in the relevant sectoral anti-corruption action plans for 2017-2020 but not in the NIAS.

C – non-compliant. At least two reports (prepared by the National Anti-Corruption Centre (NAC)) made available to the monitoring team meet the criteria of this element: "Strategic analysis regarding the phenomenon of corruption in the local public administration in the Republic of Moldova"(2015) and "Study on the consolidation of authorities to prevent and combat economic crimes in the Republic of Moldova" (2016). However, Moldova was unable to demonstrate a clear link between these reports and the current policy documents or their support documents.

D – compliant. The NIAS contains references to a number of assessments of the situation in the country in terms of corruption, including studies by local or international civil society organisations and think tanks

(Transparency International Moldova's National Integrity System Assessment (2013-2014); a study by the Centre for Analysis and Prevention of Corruption (CAPC) CAPC on the degree of transposition into national legislation of the Council of Europe Civil Convention on Corruption; studies by independent analytical centre Expert-Grup on the reports of the Court of Accounts and on the implementation of its decisions; a Basel Institute study on the asset recovery mechanisms in Moldova; a UNDP-commissioned report on the compliance of Moldova's anti-corruption system with the relevant international standards;), reports by international organisations (GRECO's Second compliance report for the Third round of evaluation of Moldova) and international rankings and indices (the World Bank's Ease of Doing Business study (2015); the Heritage Foundation's Index of Economic Freedom (2016); TRACE International's Global Business Bribery Risk Index;).

E – compliant. The NIAS specifically refers to two public opinion surveys: Transparency International's Global Corruption Barometer (the 2009 and 2015 editions) and a 2017 survey by the International Republican Institute in Moldova which included multiple questions on corruption. Furthermore, according to Moldova, additional surveys were used during the drafting of the NIAS, although these are not cited in the document.

F – non-compliant. The monitoring team did not receive clear evidence that administrative or judicial statistics were used for the development of the policy documents and their use was not reflected in the NIAS or its supporting materials.

## Benchmark 1.1.2.

| | Compliance |
|---|---|
| The action plan is adopted or amended at least every three years | X |

Non-compliant. Moldova adopted an amended implementation action plan when it extended the 2017-2020 NIAS until 2023 in December 2021, so there was no update within three years of the adoption of the original action plan and there was a one-year gap when no action plan was in place.

## 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 | X |
| E. Source of funding | ✓ |

A – compliant. The NIAS has six general objectives: discouraging involvement in acts of corruption; recovery of the proceeds of corruption offences; ethics and integrity in the public, private and non-governmental sectors; protection of whistleblowers and victims of corruption; transparency of institutions, the financing of political parties and the media; educating society and officials. The NIAS lists the actions to be implemented in order to achieve each of these. Furthermore, there are several objectives (priorities) under each of the strategy's seven "pillars" (the Parliament, the Government, public sector and local public

administration, justice and anti-corruption agencies, the Central Electoral Commission and political parties, the Court of Accounts, the People's Advocate, the private sector). The NIAS implementation action plan is structured around these seven pillars and establishes relevant measures, implementation deadlines and responsible agencies for each objective.

B – compliant. The NIAS includes outcome indicators for each objective (priority) under each of the seven "pillars." For example, for the objective of "promoting ethics among the members of Parliament," the outcome indicators are the number of relevant inquiries and the number of sanctions imposed. For the objective of "effectiveness of justice and anti-corruption bodies," the outcome indicator is improved statistics of convictions for corruption acts; and so on.

C – compliant. The NIAS includes several impact indicators for each of the seven pillars. The impact indicators established for the pillars mainly focus on aspects related to the level of trust, the perceptions of corruption within the institutions, the quality of the regulations, the experiences of people in contact with the public authorities, the level of implementation of the authorities' recommendations (the Court of Accounts, the Ombudsman), freedom of business from corruption, reduction of money laundering risks (private sector), transparency of activity, etc.

D – non-compliant. According to Moldova, the total cost of implementation of the NIAS in 2017-2020 was 909,629,670 Moldovan Lei (MDL) [EUR 45,722,535], with the assistance of international development partners accounting for approximately 3.2 percent of this sum. However, an estimated budget did not appear in the original action plan. Also, no budget figures are available for the updated action plan which covers the period through 2023.

E – compliant. The NIAS implementation action plan identifies a source of funding for each measure.

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

### *Assessment of compliance*

#### Benchmark 1.2.1.

The following is published online:

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

A – compliant. The drafts of both the NIAS and the updated Action Plan adopted in 2021 are available on the NAC website.

B – compliant. The adopted final versions of the NIAS and the updated Action Plan are available on the websites of the NAC and the Parliament.

## 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 | ✓ |

A – compliant. The drafting of the current strategy began in November 2016 and ended in February 2017, with multiple consultation events held in between. Two and a half months were allotted for feedback. Following the initial launch event, separate discussions took place on individual “pillars” of the strategy. According to the government, over 1,000 comments on the original draft were ultimately submitted. The extension of the NIAS and the adoption of an updated Action Plan in December 2021 were preceded by a dual consultation process between November 2020 and February 2021 during which first the relevant public authorities and then CSOs were invited to submit their proposals and comments (the period allocated for the latter procedure was between 31 December 2020 and 19 January 2021). Public entities submitted 35 "opinions" and the CSOs – three "opinions" during this process.

B – compliant. During the adoption of the current NIAS in 2017, the NAC prepared two documents detailing the comments received as well as the reasons for accepting or rejecting them. Similarly, during the extension of the NIAS and the update of the Action Plan in 2021, the NAC published two documents detailing the proposals received from public entities and CSOs respectively and providing explanations for the proposals that were not accepted or were only accepted partially.

C – compliant. The documents referred to in element "B" above are available on the NAC website.[5]

### Indicator 1.3. The anti-corruption policy is effectively implemented

#### *Assessment of compliance*

## Benchmark 1.3.1.

| | Compliance |
|---|---|
| Measures planned for the previous year were fully implemented according to the government reports | 49% |

According to the Monitoring and Evaluation Report of the Implementation of the National Integrity and Anti-Corruption Strategy for the years 2017-2023 (reporting period: 2022), among the reported actions, 52 (49%) were fully implemented, 43 (40.5%) were partially implemented, and 8 (7.5%) of actions were not implemented, while 3 (3%) of actions were qualified as impossible to achieve, mostly due to the non-occurrence of the cause stipulated in the action. The country’s score for this benchmark is therefore 49% of the maximum score.

[5] https://cna.md/pageview.php?l=ro&idc=44&t=/Transparenta-decizionala/Proiecte-elaborate

## 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 | ✓ |

Compliant. According to Moldova, only one measure ("equipping with polygraph machines of the Superior Council of Magistracy, the Customs Service and the Ministry of Internal Affairs") could not be implemented in 2022 because of the lack of funds, which is well below the 10-percent threshold.

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

#### *Background*

A unit within the National Anti-corruption Centre (NAC) – the Anti-Corruption Policy Service -- acts as the Secretariat of the Working Group responsible for coordination and monitoring. According to the Strategy, the Secretariat is responsible for organizing meetings of the monitoring groups (three monitoring groups made up of representatives of the relevant public institutions and CSOs oversee the implementation of the NIAS in different areas), collecting information from the implementing agencies, and drafting implementation reports. The relevant implementing institutions are required to provide it with necessary information.

#### *Assessment of compliance*

## Benchmark 1.4.1.

Coordination and monitoring functions are ensured:

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

A – compliant. The NIAS identifies the NAC as the Secretariat of the Monitoring Groups responsible for the overseeing the implementation of the Strategy. Within the NAC, based on a formal order by the agency's head, this role is assigned to the Anti-Corruption Policy Service. According to Moldova, based on the above order, the Service's mission is to "ensure the efficient management of anti-corruption policies,

through the coordination, the process of elaboration, monitoring and objective evaluation of their implementation by all public entities at the central and local level." The staff is currently in place and operational, with all (two) positions filled.

B – compliant. The Strategy lists the duties (rather than powers) of the Secretariat, including collecting information and organising the coordination meetings. It also provides that "public entities present to the Secretariat in writing and by e-mail information necessary for the monitoring and evaluation of the implementation of the planned actions for which they are responsible within the time frames established by the action plans." Furthermore, the NAC (which is designated as the Secretariat of Monitoring Groups) has the right to "request and receive from public authorities, and from natural and legal persons, any documents, records, information and data to be able to exercise its duties of preventing and analysing corruption and related acts…" (Article 6 of the Law no.1104/2002 on NAC). The authorities that fail to provide the requested information face a sanction in the form of a fine (Article 349 paragraph (1) of the Contravention Code of the Republic of Moldova no.218/2008).

C – compliant. The dedicated staff (Anti-Corruption Policy Service of the NAC) includes two people. CSOs have suggested that this number of employees is not enough. However, the monitoring team has not seen any definitive evidence that the work of the Secretariat has been affected negatively by insufficient human resources. According to Moldova, some of the Secretariat's work (including the drafting of monitoring reports) is done by external experts funded by NAC's international partners. During the reporting period, the Secretariat fulfilled its responsibilities, collecting information from the 102 implementing public entities and producing the monitoring report for the first six months of the year (the report for the whole year was published in the first quarter of the 2023 which is outside the timeframe of this assessment).

D – compliant. The Secretariat has provided the implementation agencies with methodological guidance and practice advice in the following manner: (1) a series of 15 workshops for the designated focal points from the implementing agencies on monitoring and reporting; (2) a mentoring program for the entities involved in the implementation of sectoral anti-corruption action plans; (3) on-demand support through a total of 523 emails and phone-calls in 2022; (4) a written instruction and a video tutorial for the implementing agencies. While some of these activities (the 15 workshops and the mentoring programme) possibly took place outside the assessment period of this report, the 523 emails and phone calls from 2022 are definitely relevant for this assessment. Moldova has provided the monitoring team with three relevant examples.

## Benchmark 1.4.2.

Monitoring of policy implementation is ensured in practice:

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

A – compliant. A monitoring report covering the first six months of 2022 was prepared and published in the second half of 2022. Since the NIAS expired in 2020 and the decision to extend it until 2023 was only made at the end of 2021, no implementation took place in 2021 and, consequently, there was no monitoring report covering 2021 in 2022. The full monitoring report for 2022 was published in the first quarter of 2023, which is outside the timeframe of this assessment.

B – non-compliant. The monitoring report is based primarily on progress indicators which measure progress in the implementation of individual measures under each objective (priority). As for the outcome indicators which are established in the NIAS in order to measure progress at the level of the Strategy's objectives (priorities), these appear in special tables included in the monitoring report for each of the seven "pillars." However, the actual assessment in the report is based not on these indicators but mostly on results of public opinion surveys and various international indices and rankings. For example, for Pillar 1 (Parliament), the outcome indicator for objective 1.2 ("strengthening of parliamentary control") is the number of laws and public institutions subjected to parliamentary control. However, instead of the relevant figures, the monitoring report provides Moldova's scores from the World Justice Project's Rule of Law Index and the World Bank's Governance Indicators. This appears to be the case for other pillars/objectives too. While Moldova is therefore not compliant with this element, the inclusion of survey results in the monitoring reports is a positive practice, as it helps track progress based on the Strategy's impact indicators.

C – non-compliant. The monitoring report for the six months of 2022 does not include information on the amount of funding spent on the implementation of policy measures.

D – compliant. The monitoring report for the sixth months of 2022 was published online.[6]

## Benchmark 1.4.3.

Evaluation of the policy implementation is ensured in practice:

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

A – compliant. Moldova prepared its last evaluation report in 2022 and it covers the policy cycle of 2017-2020 (i.e. before the extension of the NIAS until 2023).

B – compliant. The 2017-2020 evaluation report contains assessment based on impact indicators for each of the eight pillars of the NIAS. At the end of each section, there is a table with impact indicators for the relevant pillar and the scores assigned based on change in the impact indicators over the evaluation period. According to Moldova, three surveys were carried out during the implementation period in order to measure the impact of the Strategy.

C – compliant. The evaluation report is available online via the NAC website.[7]

[6] ADD

[7] https://cna.md/public/files/RAPORT_evaluare-SNIA_2017-2020.pdf

## 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 | N/A |
| C. An evaluation report reflects an assessment of the policy implementation conducted by non-governmental stakeholders | ✓ |

A – compliant. All three monitoring groups responsible for overseeing the implementation of the NIAS include non-governmental stakeholders who participated in the groups' meetings. According to Moldova, no request from a non-governmental stakeholder to participate in the monitoring has been rejected. This was also confirmed by representatives of several CSOs at their meeting with the monitoring team.

B – not applicable: CSOs did not propose any written contributions to the monitoring report for 2022.

C – compliant. The 2022 NIAS evaluation report reflects at least one assessment by an NGO: The 2021 NIAS Impact Monitoring Survey conducted by the Centre of Sociological, Politological and Psychological Analysis and Investigations CIVIS (Centre CIVIS).

### Box 1.1. Good practice – Monitoring and Evaluation Process

A number of elements of the NIAS monitoring and evaluation process in Moldova represent positive practices that other countries could potentially consider for application in their respective contexts.

First, for each of its "pillars", the strategy includes general objectives, more specific "priorities", expected outcomes, outcome indicators and impact indicators. If applied effectively in practice, this framework should make it possible to track both short-term progress and long-term impact of policy measures and adjust them accordingly.

Second, the establishment of monitoring groups responsible for overseeing the implementation of the policy is a welcome decision as they include a wide range of stakeholders and should (at least in theory) facilitate comprehensive and unbiased assessment of the process. The authorities must therefore address the concerns of CSO representatives that their voices are not properly heard in these groups.

Finally, the use of an external assessment report as one of the sources for the evaluation of the policy's implementation is a very encouraging development, especially since this type of approach is not yet particularly common in the region.

## Assessment of non-governmental stakeholders

CSO representatives whom the monitoring team met noted that the opinions of CSO members of the NIAS monitoring working groups were often ignored and not included in the final decisions of the groups, unlike the proposals by representatives of public authorities.

# 2 Conflict of interest and asset declarations

Moldova's legislation contains definitions of private interest and conflict of interest (including actual and potential but not apparent COI) and establishes responsibilities for the reporting and resolution of COI. The range of COI resolution methods available under the law is limited and does not include such options as divestment of asset-related interest, recusal, and resignation of the official in question. There are specific COI resolution methods for the officials with no direct supervisors but not for the members of collegiate state bodies. There are no specific regulations or rules tailored to the risks of specific public offices. Sanctions for various COI-related violations are in place, and they are applied in practice, although not to high-level officials. There is no practice of application of other COI enforcement measures, such as invalidation of decisions or contracts.

Moldova has a comprehensive system of asset declarations covering all relevant categories of public officials (and their family members) and most of the types of assets and interests required under the benchmarks. The declarations are filed through a centralised electronic system and are accessible to the general public. But information is not published in a machine-readable format and some information is withheld.

Verification of asset declarations is performed by the National Integrity Authority's integrity inspectors and includes examination of truthfulness and

completeness of disclosure, as well as review for signs of conflict of interest and illicit enrichment. The powers of integrity inspectors are mostly adequate for the performance of these tasks. A large number of verifications are triggered by external complaints or notifications. On the negative side, there is no systematic practice of risk-based verifications. While the wide scope of verifications is commendable, the detection rate of violations (and consequently of sanctioning) is low.

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

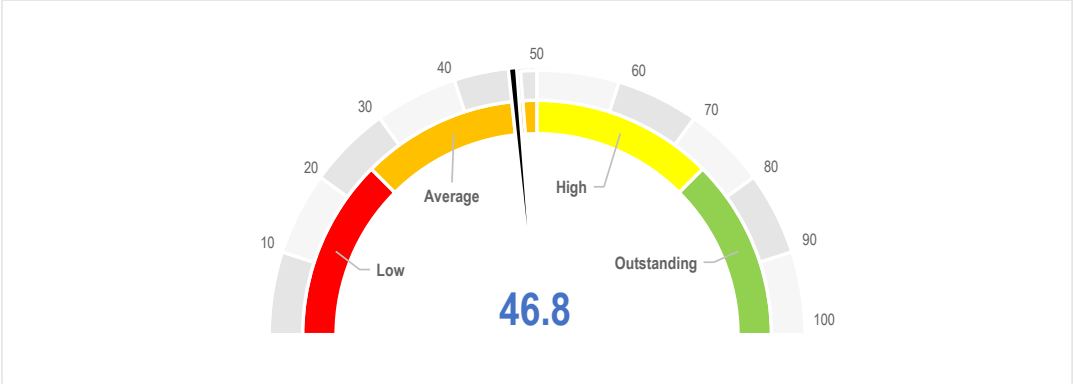
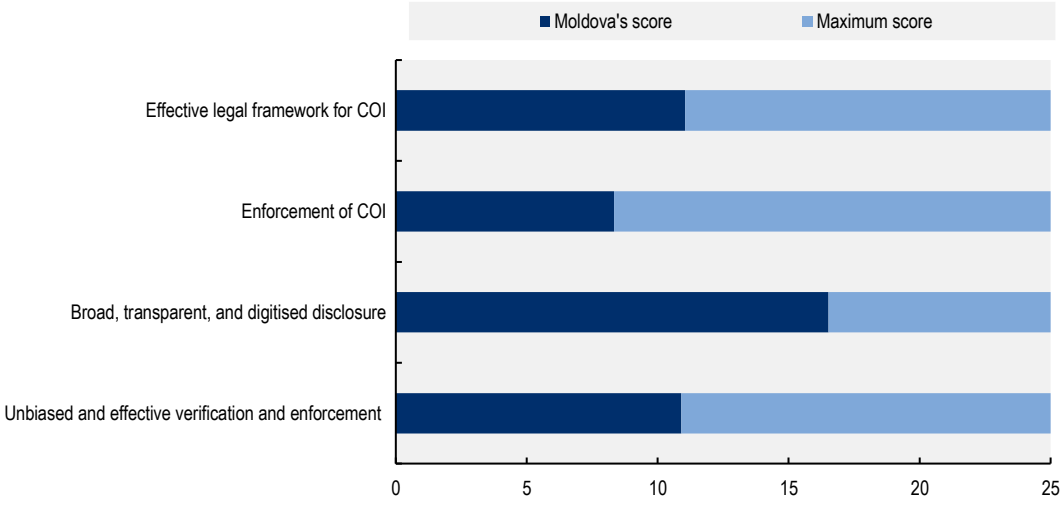



**Figure 2.2. Performance level for Conflict of Interest and Asset Declaration by indicators.**



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

### *Background*

A number of laws in Moldova are relevant to the regulation of conflict of Interest (COI). The Law on Integrity establishes the general integrity requirements for “public agents” (a definition which includes both political officials and professional members of the civil service) and public institutions, identifies “compliance with the legal regime of conflicts of interest” as one of the “measures designed to ensure institutional integrity” and outlines the general responsibilities of the relevant persons and institutions in terms of COI prevention. The Law on Declaration of Assets and Persons Interests contains more detailed provisions on how cases of COI are to be resolved. Finally, the Law on the National Integrity Authority (NIA) defines the powers and the responsibilities of the institution which plays a key role in the enforcement of COI rules.

### *Assessment of compliance*

#### Benchmark 2.1.1.

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

| Element | Compliance |
|---|---|
| A. Actual and potential conflict of interest | ✓ |
| 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 | ✓ |
| C. An apparent conflict of interest | X |

A – compliant. Moldova's legislation contains the definition of both actual and potential conflict of interest. Actual conflict of interest is defined as a situation where an official has to "approve an application, issue an administrative act, conclude a deal personally or through another person, make or participate in the making of a decision in which they have a personal interest or which concerns physical or legal persons that they have close relations with, that they have property relations with and that influence or can influence unbiased and objective exercise of powers, a public office or an important state office." A potential conflict of interest is defined as a situation where an official's "personal interests can lead to the emergence of an actual conflict of interest." Both definitions meet the relevant standards that this benchmark is based on.

B – compliant. Moldova's anti-corruption legislation contains two separate definitions of private interests. The Law on Integrity (Article 3) defines private interests as "(personal or group) interests of physical persons, as well as persons or legal entities with close (institutional, corporate or client) relations to them, concerning the exercise of rights and freedoms, inter alia with the purpose of obtaining property, services, advantages, any form of benefits, offers or promise of such." The definition more relevant to this benchmark appears in Article 2 of the Law on Declaration of Assets and Interests which regulates COI: "Any material or immaterial interest of the subject of the declaration resulting from his/her activities as a private person, from his/her relations with those close to him/her or with legal persons and other economic entities, regardless of the property type, from his/her relations or affiliations with non-commercial organisations,

including political parties, or with international organisations." The definition meets the criteria of the benchmark.

C – non-compliant. Moldova's legislation does not contain the concept of apparent conflict of interest.

## 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 Law on the Declaration of Assets and Personal Interests (Articles 11-15) assigns responsibilities for preventing, reporting and managing COI.

A -- compliant. Potential conflicts of interest are to be reported as part of the regular disclosure of assets and interests (via asset declarations). As for an actual conflict of interest, the person in question is required to inform their immediate superior official or body about the COI immediately or within three days of establishing its existence.

B – compliant. The law requires an official to abstain from any actions or decisions in their official capacity until the COI is resolved.

C – non-compliant. The law assigns the responsibility for the resolution of reported COI to the officials in question, the heads of the relevant public institutions, the NIA and the Integrity Council. Heads of public bodies are required to designate a person who will keep a register in which each declaration of a COI is to be included. In the case of high-level public officials who have no immediate superiors, COIs are to be reported to the National Integrity Authority (also within three days from their occurrence) which is responsible for keeping a register of such disclosures. The NIA's officials and inspectors report their COI to the Integrity Council. The law provides a range of options for COI resolution (see Benchmark 1.3) that the relevant managers/bodies can choose from.

As far as COI detected through other means is concerned, under Article 37 of the Law on National Integrity Authority, the NIA is to start a review ("control") of COI cases based either on the results of verification of an official's asset declarations or complaints by physical or legal persons (including anonymous complaints), as well as information from open sources. However, there are no similar provisions concerning the resolution of COI detected through other sources by the managers of public entities. While, under Article 13 of the Law on the Declaration of Assets and Personal Interests, they "must not intentionally allow individuals working in the public organisation which they manage to exercise their official duties while being in a situation of actual conflict of interests," it is debatable whether this provision is sufficient to ensure that the managers address cases of COI detected beyond the self-reporting procedure.

## 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 | ✓ |
| D. Restriction of the affected public official's access to particular information | ✓ |
| 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 | ✓ |
| G. Performance of duties under external supervision | X |
| H. Resignation/dismissal of the public official from their public office | X |

Article 14 of the Law on the Declaration of Assets and Personal Interests establishes a number of methods for COI resolution.

A – non-compliant. The legislation does not provide for the resolution of COI through the divestment or liquidation of the asset-related interest by the public official.

B – non-compliant. The legislation does not provide for the resolution of COI through the resignation of the public official from the conflicting private-capacity position or function, or removal of private interest in another way.

C – compliant. Under the law, an official can resolve a COI by refraining from adopting the relevant decision or participation in the relevant decision-making, while informing all relevant parties about this.

D – Compliant. The legislation provides for the resolution of COI through the restriction of the affected public official's access to particular information.

E – non-compliant. Although the legislation provides for the resolution of COI through the transfer of the public official to duty in a non-conflicting position, such transfer requires the consent of the official in question, which undermines the effectiveness of this method.

F – compliant. The legislation provides for the resolution of COI through a "re-distribution of the tasks and the duties" of an official.

G – non-compliant. The legislation does not provide for the resolution of COI through the performance of duties under external supervision.

H – non-compliant. Resignation or dismissal are not listed among the methods of COI resolution in the relevant legal provision (Article 14 of the Law on Declaration of Assets and Personal Interests). However, Moldova has pointed to another provision (Article 39 of the Law on National Integrity Authority) whereby an integrity inspector can request an official's termination as a sanction for their failure to report or resolve COI. However, this element of the benchmark refers to methods of COI resolution, rather than sanctions for the failure to resolve COI.

## 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 | ✓ |

A – non-compliant. There are no specific methods for resolving COI in collegiate state bodies. The general methods detailed in Benchmark 1.3 apply to the members of such bodies. Moldova highlighted a provision in the Law on Declaration of Assets and Personal Interests (Art. 14, Par. 4) whereby an official "can resolve the actual conflict of interest refraining from resolving the request, from issuing/adopting the administrative act, from concluding the legal act, from participating in a decision making or voting, informing all the parties concerned by that decision regarding the measures taken to protect the fairness of the decision-making process." While this provision could, indeed, be relevant to the member of collegiate state bodies, it is not specific to collegiate bodies, and it also leaves it up to the officials to decide whether or not to abstain from participation in decision-making when a conflict of interest exists (without establishing a clear guidance of any subsequent steps by the relevant authorities). Moldova cannot therefore be considered compliant with this element.

B – compliant. Specific methods of COI resolution for top official who have no direct superiors are established by Articles 12 and 14 of the Law on Declaration of Assets and Personal Interests. Such officials are to report their COI to the NIA which can subsequently recommend that they delegate the relevant responsibility to a third person or exercise their relevant power (by issuing an act, adopting a decision or participating in decision-making) if delegation is not possible.

## Benchmark 2.1.5.

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

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

The public officials listed under different elements of this benchmark are covered by Moldova's general COI regulations described in previous sections of this chapter. However, Benchmark 1.5 requires existence of special regulations or guidelines tailored to specific risks of different types of positions which are currently absent in Moldova.

A – non-compliant. There are no special COI regulations or official guidelines for judges.

B – non-compliant. There are no special COI regulations or official guidelines for prosecutors.

C – non-compliant. There are no special COI regulations or official guidelines for members of Parliament.

D – non-compliant. There are no special COI regulations or official guidelines for members of Government.

E – non-compliant. There are no special COI regulations or official guidelines for members of local and regional councils.

## Indicator 2.2. Regulations on conflict of interest are properly enforced

### *Assessment of compliance*

## Benchmark 2.2.1.

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

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

A – compliant. Moldova provided the monitoring team with three cases where NIA sanctioned, in 2022, public officials for their failure to report an ad hoc COI with the prohibition to hold public office for a period of three years.

B – non-compliant. Moldova provided the monitoring team with three cases where public officials were sanctioned for their failure to resolve their own COI. However, this element of the benchmark refers to cases where a manager/head of agency receives a report from a public official about the official's COI and fails to act on the report by resolving COI of the official.

C – non-compliant. There were no such cases in Moldova during the assessment period. The Law on Integrity (Article 16) requires heads of public entities to ensure "disciplinary responsibility" of their employees who violate the rules on gifts. Moldova provided no information regarding any further legislative provisions establishing sanctions for violations concerning gifts and hospitality.

D – compliant. Moldova provided the monitoring team with three cases where NIA sanctioned public officials for violation of the rules on incompatibilities with the prohibition to hold public office for a period of three years.

E – compliant. Moldova provided the monitoring team with three cases where NIA sanctioned public officials for violation of post-employment restrictions with the prohibition to hold public office for a period of three years.

## 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 | ✓ |
| B. Violation of restrictions related to gifts or hospitality | X |
| C. Violation of incompatibilities | ✓ |
| D. Violations related to requirements of divesting ownership rights in commercial entities or other business interests | X |
| E. Violation of post-employment restrictions | X |

A – compliant. Moldova provided the monitoring team with three cases where high-level public officials (heads of central state agencies who were also politically exposed persons under the country's anti-money laundering legislation) were sanctioned by the NIA, in 2022, for violation of legislation on prevention and resolution of ad hoc COI with the prohibition to hold public office for a period of three years, as well as a fine.

B – non-compliant. There were no such cases in Moldova during the assessment period. Moldova provided no information regarding any legislative provisions establishing sanctions for violation of restrictions on gifts and hospitality by high-level officials and it appears that no such sanctions are in place.

C – compliant. Moldova provided the monitoring team with tree cases where violation of the rules on incompatibilities by public officials (mayors, who were politically exposed persons under the country's anti-money laundering legislation) was established and fines were imposed.

D – non-compliant. There were no such cases in Moldova during the assessment period.

E – non-compliant. There were no such cases in Moldova during the assessment period.

## 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 |

A – non-compliant. There were no such cases in Moldova during the assessment period. According to Moldova, there were 15 such cases over the preceding three years. While this is not relevant for the assessment of compliance in 2022, it does indicate that sanctions are established in the law and there is also practice of their application.

B – non-compliant. There were no such cases in Moldova during the assessment period. It is not clear whether the legislation contains any provisions concerning confiscation of illegal gifts. Moldova did not provide the monitoring team with relevant information regarding the law.

C – non-compliant. There were no such cases in Moldova during the assessment period. Moldova's legislation does not explicitly provide for the possibility of revoking employment or other types of contracts of former public officials which violate post-employment restrictions.

## 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 Law on the Declaration of Assets and Personal Interests is Moldova's primary piece of legislation governing the disclosure of assets and interests, while the Contravention Code and the Criminal Code establish administrative and criminal sanctions for relevant offences. The National Integrity Authority (NIA) is the body responsible for collecting and verifying the asset declarations.

### *Assessment of compliance*

## Benchmark 2.3.1.

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

| Element | Compliance |
|---|---|
| A. The President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies | ✓ |
| 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 | ✓ |
| G. Prosecutors, members of the prosecutorial governance bodies | ✓ |
| H. Top executives of SOEs | ✓ |

The circle of public officials who are required to declare their assets and interests annually is established by Article 3 of the Law on Declaration of Assets and Personal Interests and the annex to the Law on the Status of Persons Holding Responsible State Positions.

A – compliant. The requirement to declare assets and interests annually applies to the President, members of Parliament, members of Government and their deputies, heads of central public authorities and their deputies.

B – compliant. The requirement to declare assets and interests annually applies to the members of collegiate central public authorities, including the members of the National Financial Market Commission,

the Central Electoral Commission, the Coordination Council on Television and Radio and the Supervisory Council of the National Bank of Moldova. It appears that all collegiate independent market regulators and supervisory authorities are covered.

C – compliant. The requirement to declare assets and interests annually applies to the head and members of the board of the National Bank of Moldova and the supreme audit institution.

D – compliant. The requirement to declare assets and interests annually applies to the "employees of the offices of persons holding responsible state positions."

E – compliant. The requirement to declare assets and interests annually applies to the regional governors and mayors of cities.

F – compliant. The requirement to declare assets and interests annually applies to the judges of general courts, judges of the constitutional court, members of the judicial governance bodies.

G – compliant. The requirement to declare assets and interests annually applies to prosecutors and members of the prosecutorial governance bodies.

H – compliant. The requirement to declare assets and interests annually applies to "heads of public organisations and their deputies." The definition of a "public organisation" under the law covers SOEs.

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

The list of items to be included in an official's asset declaration is established through Article 4 of the Law on Declaration of Assets and Personal Interests and its Annex No 1.

A – compliant. The law requires officials to declare immovable property, vehicles and other movable assets located domestically or abroad. The declaration form explicitly requires disclosure of asset held domestically and abroad.

B – compliant. The law and declaration form require officials to declare income, including its source.

C – compliant. The law states that the gifts whose total value does not exceed 10 average salaries are exempt from the disclosure requirement, which means that other gifts must be declared (as part of income).

There is a separate field for gifts in the declaration form ("income in the form of gifts or inheritance) where the declarant must specify the "service rendered/item yielding income", along with its source.

D – compliant. The law requires officials to declare shares in companies and securities.

E – compliant. The law requires officials to declare their bank accounts.

F – non-compliant. The law requires officials to declare cash held outside financial institutions. There is, however, no explicit requirement to declare the cash held in financial institutions or personal loans given (i.e. the loans where the declarant is the creditor).

G – compliant. The law requires officials to declare loans and other financial liabilities.

H – non-compliant. The requirement to declare outside employment or activity is established through the requirement to declare income and indicate its source. Consequently, there is no duty to declare unpaid activities. Also, the declaration form only includes fields for income from the types of outside employment that are allowed by the law (academic work, arts, etc.), so other possible types of outside employment (which may be incompatible with public office) can remain undeclared.

I – compliant. The law requires officials to declare their membership in organisations and their bodies.

## 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 | ✓ |

A – compliant. Article 2 of the Law on Declaration of Assets and Personal Interests defines a beneficial owner as a "natural person ultimately controlling another natural person or who owns or ultimately controls a legal entity or the beneficiary of an investment company or the administrator of an investment company or the person on whose behalf a transaction is carried out or an activity and/or who owns directly or indirectly the ownership right or control over at least 25% of the shares or voting rights of the legal entity or of the assets under fiduciary administration." Article 4 of the same law requires public officials to declare ownership of companies, including beneficial ownership. The declaration form includes fields for the name and legal address of the company, type and extent of ownership. According to Moldova, a field for a

company's identification number also appears when officials long onto the system and file the information electronically.

B – compliant. The law requires public officials to declare beneficial ownership of financial and other assets (such as movable and immovable property). The declaration form includes fields on the details of the nominal owner of the asset in question, description of the asset and its value.

C – non-compliant. The law only requires declaration of expenses on services (with the total value above 10 average monthly salaries).

D – non-compliant. There is no requirement to declare trusts.

E – compliant. The law requires public officials to declare virtual assets, including virtual currencies, with the total value above 10 average monthly salaries. The declaration form includes fields for the name, amount and acquisition date of the asset.

## 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 | ✓ |

Compliant. The law states that all provisions concerning the declaration of assets and personal interests also apply to those of the declarant's family members and partner. The definition of a family member includes a spouse, a minor child, and a dependant. A dependant is defined as a person who lives in the same household as the declarant or has a contract of lifelong financial support with the declarant, and whose annual income does not exceed two average salaries across the economy.

## Benchmark 2.3.5.

| | Compliance |
|---|---|
| Declarations are filed through an online platform | ✓ |

Compliant. The declarations are filed through an online platform that the NIA operates. The only exception is the declarations of the officials from the Security and Intelligence Service, the National Anti-Corruption Centre and the Ministry of Internal Affairs whose identity is a state secret: These are filed in a physical form and are handled by special commissions established in the relevant public institutions.

## Benchmark 2.3.6.

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

| Element | Compliance |
|---|---|
| A. Information from asset and interest declarations is open to the public by default in line with legislation, and access is restricted only to narrowly defined information to the extent necessary to protect the privacy and personal security | X |
| B. Information from asset and interest declarations is published online | ✓ |
| 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 |

A – non-compliant. The information from asset and interest declarations is open to the public by default. Article 9 of the law lists the types of information from the declaration that are not to be published. While some of the exceptions meet the criteria of this element of the benchmark (such as personal ID numbers of the declarants and their family members, residential address), complete exclusion of certain declared assets (cash held outside financial institutions, precious stones, works of art, etc) from published information does not. Moldova has noted that these exclusions stem from the requirements of national legislation on personal data protection.

B – compliant. Article 9 of the law requires the NIA to publish the declarations online and this is also done in practice.

C – non-compliant. The information is not currently published in a machine-readable format.

D – non-compliant. See above.

## 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 |

A-E – non-compliant. According to Moldova, a government interoperability platform ensures interaction and data exchange between the e-integrity system (where asset declarations are filed) and the electronic public registries which exist in Moldova. However, according to Moldova, cross-checking between the declaration system and these databases requires a human intervention. The monitoring team has been unable to ascertain the exact degree of this intervention and cannot consider Moldova compliant.

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

### *Background*

The responsibility for the verification of the declarations is assigned to the NIA, according to Article 5 of the Law on the National Integrity Authority. Overseeing the system of asset disclosure is one of the two main responsibilities of the institution, the other being ensuring compliance with COI regulations.

### *Assessment of compliance*

#### Benchmark 2.4.1.

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

| Element | Compliance |
|---|---|
| A. There is the specialized staff that deals exclusively with the verification of declarations and does not perform other duties (70%) OR | A (70%) |
| 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%) | |

Compliant (A): Within the NIA, the responsibility to carry out verification of declarations is assigned to integrity inspectors. Integrity inspectors have the responsibility for verifying asset declarations along with reviewing cases of conflict of interest-related violations, including those identified outside of asset declaration the verification. Since the responsibility to monitor COI is closely linked to the verification of asset declarations, the monitoring team considers that Moldova meets the option A under this benchmark.

#### 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 | ✓ |

A – compliant. The legislation clearly establishes detection of COI as one of the aims of verification. Under Article 19 of the Law on the NIA, an integrity inspector's responsibilities include the "monitoring of assets and compliance with the legal regime of conflict of interest, incompatibilities, prohibitions and restrictions." Under Article 27 of the NIA Law, possible outcomes of verification include detection of an official's failure to comply with COI regulations, incompatibilities, and other restrictions. According to Moldova, two cases of such violations were detected in 2022 through verification of asset declarations.

B – compliant. The legislation clearly establishes detection of false or incomplete information as one of the aims of verification. Under Article 27 of the NIA Law, following the completion of verification, an integrity official can report (via a formal protocol) that an official has made inaccurate or incomplete disclosure of assets and personal interests. According to Moldova, eight cases of such violations were detected in 2022.

C – compliant. The legislation clearly establishes detection of illicit enrichment and unjustified variations of wealth as one of the aims of verification. Article 19 of the NIA Law requires integrity inspectors to record "significant" variations in the assets of a public official, as well as discrepancies between income and expenses. Under Article 27, following the completion of verification, an integrity inspector can report the "signs of significant discrepancies" between an official's income, expenses and acquisition of assets. However, according to Moldova, no such violations were detected in 2022.

## 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 | X |
| F. Providing ad hoc or general clarifications to declarants on asset and interest declarations | ✓ |

A – compliant. Under Article 20 of the Law on the National Integrity Authority, integrity inspectors have the right to "request, free of charge and obtain the necessary information from any natural person or legal entity, of public or private law, on paper and/or electronically, for the performance of the duties of verification and/or control of personal assets and interests, as well as for the verification and/or control of compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations." According to Moldova, 6,018 such requests were filed in 2022 and the information was provided in 6,013 cases. Although the law does not explicitly establish the power to request and obtain confidential and restricted information, Moldova confirmed during the on-site visit that professional and banking secrecy cannot be invoked to withhold information. Under Article 32 para 3-4 of NIA Law, financial institutions are expressly mentioned alongside natural and legal persons as under the obligation to provide the information required by the NIA (and the provision establishes no exceptions from the duty to provide the agency with the relevant information). Moldova presented to the monitoring team three relevant examples of the use of this power.

B – compliant. Under Article 20 of the Law, integrity inspectors have "free online access" to public registries for the purpose of verification. According to Moldova, such access was used on approximately 12,000 occasions in 2022. Moldova presented to the monitoring team three relevant examples of the use of this power.

C – compliant. According to Moldova, the provision in Article 20 of the law cited in element A of this benchmark also applies to the information held by banks and other financial institutions, and no prior judicial approval is required for the provision of such information. According to Moldova, access to such information was obtained in 1,812 cases in 2022. Moldova presented to the monitoring team three relevant examples of the use of this power.

D – non-compliant. The NIA does not have access to foreign sources of information, with the partial exception of international organisations and associations.

E – non-compliant. Under Article 20, Paragraph 1, as well as Article 33, Paragraph 11 of the Law, an integrity inspector can conduct or request an evaluation of an asset's value. However, according to Moldova, no such evaluations were conducted in 2022.

F – compliant. Under Article 7 of the Law, the NIA prepares guidelines on the filing of asset declarations and offers consultations to the declarants. According to Moldova, 2,106 clarifications were issued in 2022. Moldova presented to the monitoring team three relevant examples.

## Benchmark 2.4.4.

The following declarations are routinely verified in practice:

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

There are two types of verifications in Moldova: control of declarations and control of assets and private interests. The former is a formal check of a submitted declaration's compliance with the relevant requirements and is performed for all declarations filed in a given year. The latter is a thorough review of a declaration and is performed for a smaller number of declarations, usually when the control of declaration reveals an irregularity or based on reports in the media. This benchmark considers only an in-depth verification of asset declarations.

A – non-compliant. The Law on the National Integrity Authority (Article 27), at least 30 percent of the declarations verified in a year have to be those of the President, deputies, ministers, secretaries of state, judges, prosecutors, heads of autonomous public institutions/authorities. According to Moldova, 1,176 such declarations were verified in 2022. However, neither statistics nor three examples of in-depth verification (control) were provided, so Moldova cannot be considered compliant with this element.

B – compliant. According to Moldova, 590 verifications were triggered by external complaints and notifications in 2022. Moldova provided the monitoring team with three examples of such verification.

C – non-compliant. According to Moldova, there were no ex officio verifications based on irregularities detected through various, including open, sources in 2022.

D – non-compliant. There is no systematic verification based on risk analysis or cross-checks with previous declarations. According to Moldova, declarations of officials from the Agency for Consumer Protection and Market Surveillance (50 in total) were selected for verification in 2022 following the NAC's detection of the

involvement of the Agency's four employees in corruption the previous year. However, this appears to have been a one-off case, rather than part of a regular process.

## Benchmark 2.4.5.

The following measures are routinely applied:

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

A – non-compliant. According to Moldova, there were no such cases in 2022.

B – non-compliant. According to Moldova, there were no such cases in 2022.

C – non-compliant. According to Moldova, there were no such cases in 2022.

## Benchmark 2.4.6.

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

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

A – non-compliant. Moldova's legislation does not provide for the application of administrative sanctions for false or incomplete information in declarations. Criminal sanctions are in place instead.

B – non-compliant. According to Moldova, there were no such cases in 2022.

C – non-compliant. According to Moldova, there were no such cases in 2022.

### Assessment of non-governmental stakeholders

According to the monitoring team's CSO interlocutors, at the time of the on-site visit, the NIA was understaffed, with less than half of the integrity inspectors' positions currently filled. According to Moldova, 29 of the 43 positions of inspectors in the NIA (67.5 percent) were filled.

# 3 Protection of whistleblowers

Moldova's legislation guarantees protection to individuals who report corruption at their workplace. The precondition of reporting in good faith and the public interest test are problematic. Protection extends to all relevant categories of whistleblowers, including those employed in the public and the private sectors, SOEs and defence and security institutions. Some important types of safeguards (such as protection of a whistleblower's identity and protection from retaliation at workplace) are in place, but others are not (such as protection of personal safety and release from liability linked with the disclosure). The law also does not contain provisions on consultation on protection, free legal aid or reinstatement (although it does entitle whistleblowers to compensation).

Whistleblowers can report internally at their workplace or to the designated public institution (the NAC), or they can opt to make a public disclosure under specific conditions. Not all public institutions have set up internal reporting channels in practice. There is no dedicated central electronic platform for reporting (although reports can be filed through the NAC website). Anonymous whistleblower reports are not allowed under the law, and individuals who report anonymously are not entitled to protection.

The responsibility for whistleblower protection is assigned to the People's Advocate (Ombudsman), but the institution has no unit or staff dealing exclusively with whistleblowers. The expansion of the institution's mandate to cover whistleblower protection has not been followed by an increase its

human or financial resources or provision of relevant training. The People's Advocate also lacks appropriate powers to effectively review whistleblower appeals and provide protection.

The data on the application of whistleblower protection law in practice is very limited. The People's Advocate only received three applications in 2022 and none of these qualified for protection.

**Figure 3.1. Performance level for Protection of Whistleblowers is average.**

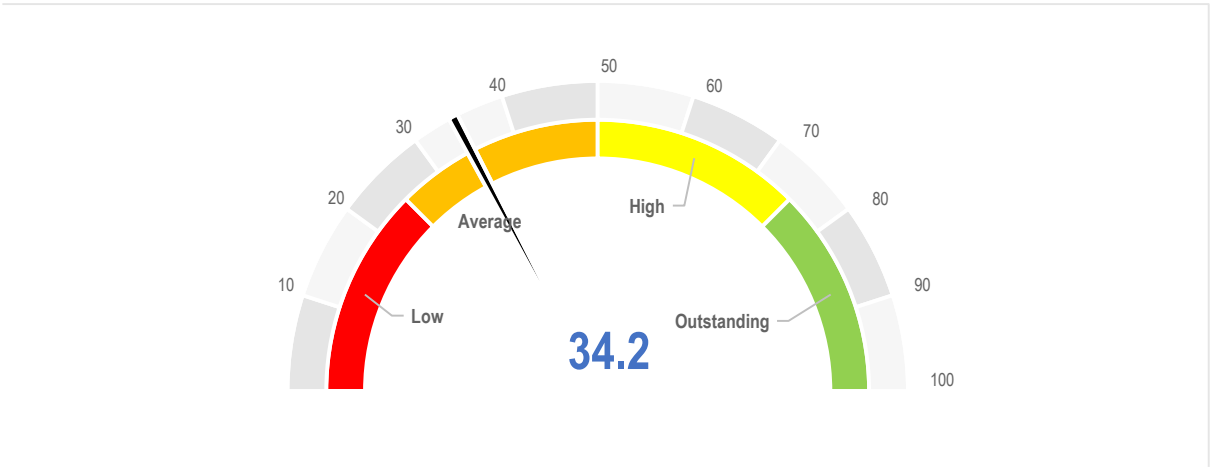
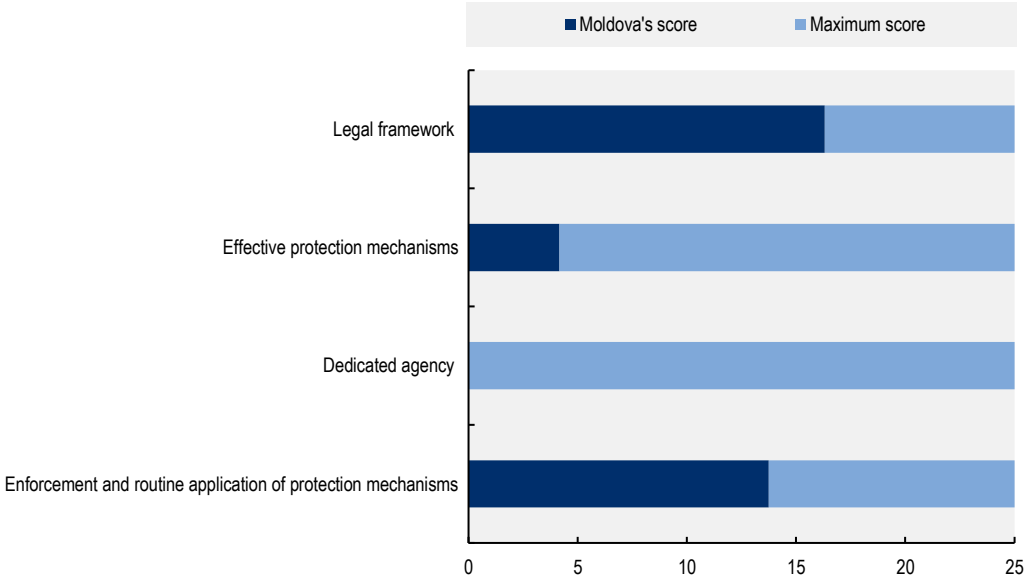



**Figure 3.2. Performance level for Protection of Whistleblowers by indicators.**



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

### *Background*

Whistleblower protection in Moldova was regulated in 2022 by the Law on Informers on Integrity (whistleblower protection law), which established the scope of protection and the procedures for reporting and consideration of reports, and also defines the bodies responsible for the enforcement of the relevant provisions. The law was subsequently repealed and replaced by new legislation in 2023, which is outside the timeframe of this assessment and is thus not covered in this report. There is also a Regulation on the procedures for the examination and internal reporting of disclosures of illegal practices approved by a government decision.

### *Assessment of compliance*

#### Benchmark 3.1.1.

The law guarantees the protection of whistleblowers:

| Element | Compliance |
|---|---|
| A. Individuals who report corruption-related wrongdoing at their workplace that they believed true at the time of reporting | ✓ |
| B. Motive of a whistleblower or that they make a report in good faith are not preconditions to receiving protection | ✓ |
| 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 | X |

*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.*

A – compliant. Under Article 6 of the whistleblower protection law, protection is to be granted to an individual who had a reasonable ground to believe that the report concerning wrongdoing was true. Article 11 of the Law explicitly links the report to the wrongdoing at the workplace by requiring that the whistleblower report concerns an entity in which the person is an employee.

B – compliant. Article 3 of the law defines a whistleblower as an "employee who makes an integrity report", while "integrity report" is defined as a "disclosure in good faith by an employee of an illegal practice that constitutes a threat or harm to the public interest." The law contains confusing provisions on the required good faith. Article 3 defines good faith as a standard of conduct that means correctness, honesty and accountability. Article 6 understands the good faith as the truthful reporting or reporting which the person believed to be true. The law also sets the presumption of good faith of a whistleblower report. If it established that the reported information was false, and the person knew or should have known that the reported information was false, then the person is not considered whistleblower and is not entitled to protection.

Although the Moldovan whistleblower protection law contains a requirement of good faith, it is understood as truthfulness of the report and is not linked to the motives of the whistleblower. There is also a presumption of good faith. Moldova is compliant with this element.

C – non-compliant. The definition of whistleblower report ("integrity report") contains a reference to public interest ("disclosure in good faith by an employee of an illegal practice that constitutes a threat or harm to the public interests"). Moldova has pointed out that the law's definition of "illegal practice" does, in turn, contain "manifestations of corruption." However, the definition of “integrity report” clearly limits illegal practices only to those that constitute a threat or harm to the public interest. There is also no practice that would show that any reporting of a corruption offence, regardless of the threat or harm to public interest, would qualify for protection.

## Benchmark 3.1.2.

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

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

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

A – compliant. The law defines a whistleblower as an "employee who makes an integrity report." The definition of "employee" is linked to the term “employer" defined as a "public or private entity" which entered into labour or civil law contractual relationships with an employee. Therefore, the law extends to both public and private sector employees.

B – compliant. See above.

C – compliant. According to Moldova, board members and employees of state-owned enterprises are considered public sector employees and are therefore covered by the law. Given the broad coverage of the law described in element A of this benchmark, it applies to both public and private organisations.

## 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 | ✓ |

Compliant. The general whistleblower protection legislation applies, in principle, to the employees of all types of institutions and does not contain any exceptions concerning the defence and security sectors. At the same time, during the monitoring team's on-site visit, Moldovan authorities noted that they only have limited information about internal WB protection regulations in the defence and security bodies. A representative of the Public Defender noted that, although the institution offers public bodies training on WB protection, the security agency has expressed no interest in such training so far. Given the absence of direct evidence that employees of defence and security bodies are excluded from the coverage of the

law, the monitoring team considers Moldova compliant, but urges the authorities to further clarify the issue in primary or secondary legislation in order to ensure appropriate protection.

## Benchmark 3.1.4.

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

Non-compliant. Under Article 18 of the whistleblower protection law, it is the employer's responsibility to "demonstrate that the measures taken against the employee are not related to the integrity report or his involvement in any capacity in relation to an integrity report. Otherwise, the actions of the employer are considered revenge." However, this provision does not cover civil liability. It is also debatable whether this general provision would suffice for the protection of a whistleblower's rights in the absence of corresponding provisions in the special legislation regulating administrative and judicial proceedings, so the monitoring team invites Moldova to provide clarifications regarding the application of the existing provisions.

## 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) | ✓ |

A – compliant. Under Article 8 of the law, the whistleblower's identity shall not be disclosed or communicated to persons suspected of illegal practice unless the employee himself discloses or communicates his identity. The same article says that a whistleblower's personal data can only be disclosed as part of a criminal investigation launched over the disclosure.

B – non-compliant. The law does not appear to provide for the protection of a whistleblower's personal safety. The provision which Moldova cited in relation to this element of the benchmark concerns the protection of a whistleblower's personal data, while this element requires protection from threats to a person's life and safety.

C – non-compliant. Under Article 14 of the law, disciplinary sanctions imposed on a whistleblower after the disclosure either by the employer or by an administrative court are to be revoked. However, the law does not provide for the release of a whistleblower from other types of liability (e.g. criminal, civil) in connection with the disclosure.

D – compliant. Article 16 of the law explicitly requires the employer to protect a whistleblower from retaliation at the workplace. Article 3 of the law defines retaliation as "any form of pressure, disadvantage or discrimination in the workplace that is related to or results from the integrity report."

## 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 | ✓ |
| D. Reinstatement | ✓ |

A – non-compliant. The law does not explicitly provide for consultation on protection. According to Moldova, in practice, whistleblowers are informed about their entitlement to protection upon submitting their reports.

B – compliant. The law does not explicitly provide for state legal aid for whistleblowers. However, whistleblowers can receive state legal aid if they meet the criteria of the dedicated law on state legal aid.

C – compliant. Under Article 14 of the whistleblower protection law, whistleblowers are entitled to "compensation for material and moral damages incurred as a result of retaliation."

D – compliant. The law does not explicitly provide for reinstatement for whistleblowers. However, whistleblowers can challenge in court any unlawful decisions by their employers (including dismissal) under general legislation on labour relations. While in court, the employer bears the burden of proof concerning the lawfulness of dismissal. The whistleblower protection law defines dismissal of a whistleblower as a form of reprisal.

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

### *Assessment of compliance*

## Benchmark 3.2.1.

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

| Element | Compliance |
|---|---|
| A. Internal at the workplace in the public sector and state-owned enterprises | 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) | ✓ |
| D. The law provides that whistleblowers can choose whether to report internally or through external channels | X |

A – non-compliant. Article 7 of the whistleblower protection law establishes the possibility of internal reporting at the whistleblower's workplace. According to Moldova, the procedures for internal disclosures were established through a government decree, although this requirement does not yet extend to SOEs. In practice, some, but not all, public bodies have established a whistleblower disclosure register or designated a person responsible for receiving whistleblower reports, or both. There was one case of a whistleblower's report being filed through an internal channel in 2022.

B – compliant. Article 10 of the Law designates NAC as the public authority responsible for receiving and reviewing external disclosures. One report was filed via NAC in 2022.

C – compliant. Article 7 of the law establishes the possibility of a public disclosure by whistleblowers. No such disclosures took place in 2022.

D – non-compliant. Under Article 9 of the law, whistleblowers can only skip internal reporting and report externally or make a public disclosure, if certain conditions are met (they think the employer may be involved in the wrongdoing, or that there is a risk for evidence to be destroyed or confidentiality to be breached, or the employer has failed to properly act on the report).

## Benchmark 3.2.2.

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

Non-compliant. There is currently no such platform in Moldova. The NAC website has a special section where whistleblower reports can be filed, but it does not have the functionalities of a specialised platform, such as collection, storage, use, protection, accounting, search, analysis of whistleblower reports, online data exchange with the whistleblower, anonymous reporting, the status of the report or feedback provided to the whistleblower, collection of whistleblower reports received by authorities acting as internal or external channels.

## Benchmark 3.2.3.

Anonymous whistleblower reports:

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

A – non-compliant. Article 11 of law explicitly requires disclosure of the identity of a report's author as a prerequisite for the person to be recognised as a whistleblower and for the report to be included in the register of whistleblower reports. Under the same article, reports that do not meet the relevant criteria (including the disclosure of identity) "shall be examined in accordance with the general rules", which means that they would not be treated as whistleblower reports. According to Moldova, the country's Administrative Code prohibits consideration of anonymous petitions, while the Code of Criminal Procedure states that anonymous complaints and denunciations cannot serve as the basis for a criminal investigation, although the latter can be launched based on the results of an investigation of such a complaint or denunciation. There were no anonymous whistleblower reports in Moldova in 2022.

B – non-compliant. The law (see above) explicitly denies the status of whistleblowing to reports filed without identification of the person.

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

#### *Assessment of compliance*

## Benchmark 3.3.1.

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

Non-compliant. According to Moldova, the People's Advocate is the institution responsible for the whistleblower protection framework. However, the institution does not meet this benchmark's definition of "dedicated agency, unit or staff" since the unit within the institution responsible for whistleblower protection (the Department for the Management and Investigation of Requests) does not deal exclusively with whistleblowers. Furthermore, according to the Office of the People's Advocate, following the assignment of this role to the institution, there has been no corresponding increase in its financial or human resources and no specific training has been provided on whistleblower protection.

## 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 |

As noted in Benchmark 3.1, the institution responsible for whistleblower protection in Moldova (the People's Advocate) does not meet the definition of a dedicated agency, unit or staff under this indicator. Below is the assessment of the powers of the People's Advocate.

A – non-compliant. Under Article 16 of the whistleblower protection law, the People's Advocate "examines the request for protection of whistleblowers and contributes to their defence" according to the provisions of the Law on People's Advocate. The legislation does not therefore establish any specific investigative powers of the People's Advocate concerning whistleblower protection.

B – non-compliant. While the People's Advocate has no specific relevant powers with regard to violations of whistleblower protection legislation, under Article 16 of the law, the institution can receive and act on complaints concerning violations of human rights, by issuing recommendations and providing assistance in court proceedings. Moldova is considered non-compliant because the People's Advocate does not meet the criteria of a dedicated agency, unit or staff.

C – non-compliant. The legislation does not contain any specific provisions on this subject.

## 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 |

As noted in Benchmark 3.1, the institution responsible for whistleblower protection in Moldova (the People's Advocate) does not meet the definition of a dedicated agency, unit or staff under this indicator. Below is the assessment of the powers of the People's Advocate.

A – non-compliant. The legislation does not grant the People's Advocate such power.

B – non-compliant. The People's Advocate cannot directly impose sanctions or apply other legal remedies against retaliation. According to Moldova, the right of People's Advocate to represent individuals before public authorities or in courts "complex cases related to human rights and freedoms or in cases of public

interest" (including cases of whistleblower protection) amounts to the power to initiate imposition of sanctions.

## Benchmark 3.3.4.

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

Non-compliant. As noted in Benchmark 3.1, the institution responsible for whistleblower protection in Moldova (the People's Advocate) does not meet the definition of a dedicated agency, unit or staff under this indicator. According to Moldova, the People's Advocate received seven complaints concerning retaliation against whistleblowers in 2022. Following the examination of these complaints, it was established that they did not meet the relevant criteria and did not qualify for whistleblower protection, so no further measures were applied. Moldova has informed the monitoring team that the People's Advocate is fulfilling its relevant responsibilities in practice and that information about this part of the institution's work is included in its annual reports.

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

***Assessment of compliance***

## Benchmark 3.4.1.

| | Compliance |
|---|---|
| Complaints of retaliation against whistleblowers are routinely investigated | ✓ |

Compliant. The monitoring team received from Moldova three cases where the People's Advocate received and reviewed complaints regarding alleged retaliation against whistleblowers. In all three cases, it was established that the complaint did not meet the relevant criteria and the complainant did not qualify for protection.

## Benchmark 3.4.2.

| | Compliance |
|---|---|
| Administrative or judicial complaints are routinely filed on behalf of whistleblowers | x |

Non-compliant. There were no such cases 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 | ✓ |
| D. Reinstatement | X |
| E. Compensation | X |

A – non-compliant. There were no such cases in 2022.

B – non-compliant. There were no such cases in 2022.

C – compliant. Moldova provided the monitoring team with three cases where (potential) whistleblowers received consultation from the People's Advocate (Public Defender). In two of these cases, the individuals in question were advised that their cases did not qualify as whistleblower reports but were rather labour disputes.

D – non-compliant. There were no such cases in 2022.

E – non-compliant. There were no such cases 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 | ✓ |

Compliant. There were no such cases in Moldova in 2022.

### Box 3.1. Good practice – Digital Tools for Whistleblower Protection

„Because the whistleblower mechanism is a new mechanism and offers public and private sector employees the possibility to make disclosures of illegal practices, for this right to be understood, including which are the reporting channels, which are the responsible authorities of the examination of disclosures of illegal practices and which is the authority responsible for granting protection to whistleblowers that contributes to providing the guarantees provided by the Law regarding whistleblowers, the People's Advocate Office has developed and launched the application ***„Submit an online application for the protection of whistleblowers***", intended for people who want to request protection: http://ombudsman.md/avertizari-de-integritate/ , ensuring the confidentiality and safety of the information submitted. Also, the People's Advocate Office developed and launched an online training course on the topic of „Whistleblowers" integrated into the E-LEARNING application fhttp://ombudsman.md/courses/). Through the „Whistleblowers" course, the institution proposed the online study of the components and specifics of the whistleblowers institution, as well as familiarizing users with the competences of the People's Advocate Office in this field. The course provides information about whistleblower action conditions and protection offered to whistleblowers. By completing the online course, users have the opportunity to check their knowledge on the same platform. The course is developed in Romanian and Russian, (since the language of interethnic communication in the Republic of Moldova is Russian). Also, People's Advocate Office and the National Anti-corruption Centre organize trainings with groups of professionals in this field as a precondition for preventing the risks of corruption, including the whistleblowers mechanism."

On 22 June 2023, the Parliament adopted in its final reading the new Law on integrity whistleblowers, which transposes Directive (EU) 2019/1937 on the protection of persons who report violations of Union law. The law will enter into force at the expiration of the term of 3 months from the date of publication in the Official Gazette of the Republic of Moldova (on the 26th of October 2023).

# 4 Business integrity

The Corporate Governance Code adopted by the National Commission for Financial Markets (NCFM) establishes the responsibility of Moldova's companies' boards for the management of risks (including corruption risks). Compliance with the Code is mandatory for the country's listed companies. There is, however, no institution with a clear mandate to enforce this provision and no effective monitoring of compliance in practice.

Companies applying for registration in Moldova are required to disclose information about their beneficial owners. This information is made available to the general public via a dedicated website free of charge, but the system lacks some key functionalities that would provide an appropriate level of transparency and facilitate the processing of large amounts of data. No effective sanctions are in place for the failure to provide beneficial ownership information or provision of false information, and enforcement appears weak.

The government informed that as of 1 July 2023 with the amendment of the AML/CFT Law (Law no. 66/2023), the beneficial owner's name, surname, country of residence is not anymore publicly available on the website of the Public Services Agency. These changes to the law were done to implement the EU Court of Justice's Decision (C37/20). The impact thereof will be taken into account during the next monitoring round.

Moldova currently has no dedicated institution for the handling of complaints by companies concerning the violation of their rights, although there was an

initiative by the government in 2020 to set up such institution. After comments by the Venice Commission and the OSCE, the initiative was abandoned. As communicated by the People's Advocate, starting from August 2023, legal entities can also appeal to the People's Advocate (Ombudsman) for human rights violations.

Legislation does not require Moldova's SOEs to have independent members on their boards. There are no uniform rules regarding the selection of SOE board members and CEOs. This has affected the transparency of board and CEO appointments in SOEs in practice. However, on the positive side, CEOs in two of the country's five largest SOEs appear to have been selected through a transparent and merit-based procedure in 2022. Comprehensive compliance programs remain an exception in Moldova's largest SOEs, while publication of key information about the operation of these SOEs is patchy at best. As understood from the government, in May and June 2023 amendments have been adopted providing for the appointment of independent board members at SOEs (see benchmark 4.1). These changes will be assessed during the next monitoring round.

**Figure 4.1. Performance level for Business Integrity is average.**

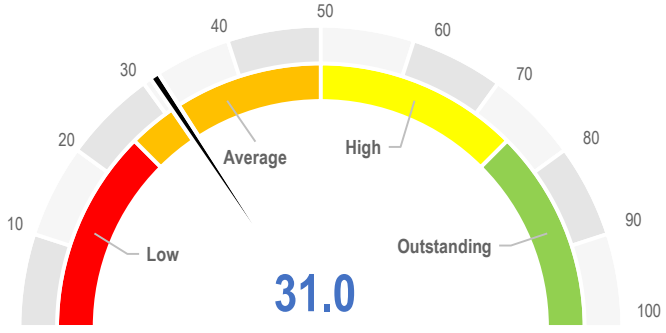
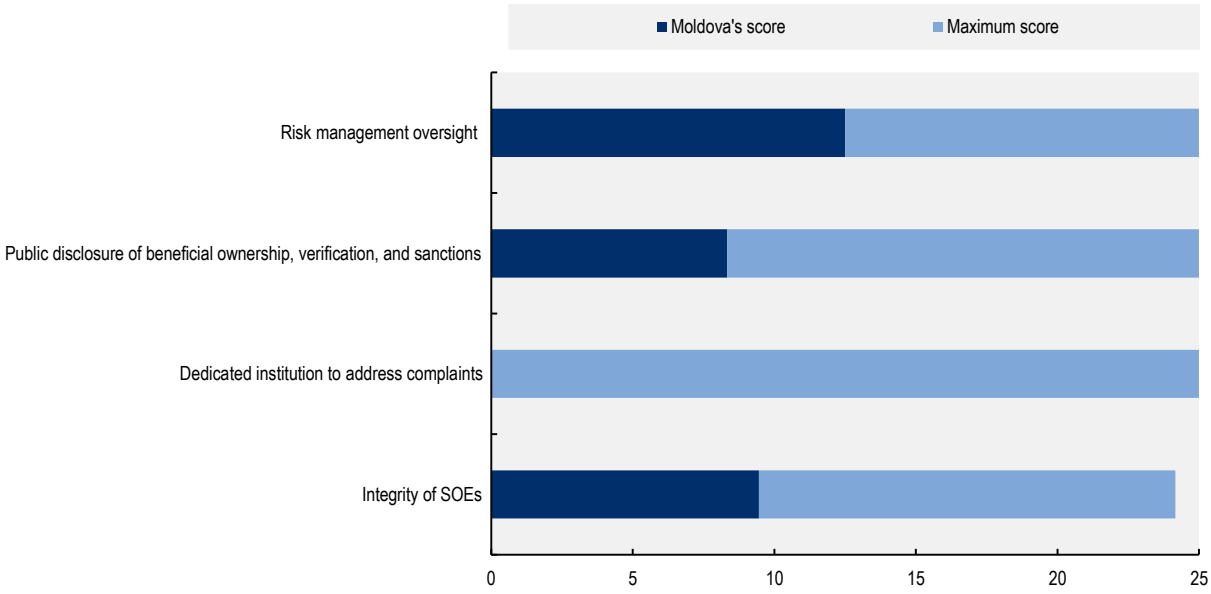


Figure 4.2. Performance level for Business Integrity by indicators.




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

### *Background*

Moldova has no general Corporate Governance Code ("CGC") but has a CGC adopted by the National Commission for Financial Markets (NCFM) which is mandatory for listed companies.

### *Assessment of compliance*

## Benchmark 4.1.1.

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

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

A – compliant. The CGC (Paragraph 121) states that a company board is responsible for the "general process of risk management, ensuring risk management in internal and external procedures and proper compliance with financial and legal procedures through the application of a stable internal mechanism."

B – compliant. The GCG (Paragraph 120) highlights "risks of corruption and fraud" as particularly significant types of risks, which a company's governing bodies are required to manage. Additionally, Chapter IV of the CGC establishes a number of responsibilities of company boards in terms of the prevention of corruption, such as endorsement of the principle of zero tolerance toward corruption and adoption of a Code of Conduct that will include relevant anti-corruption provisions.

C – compliant. Under the Decision of the National Commission of the Financial Market (the “NCFM”) whereby the CGC was adopted (Decision No. HCNPF67/10/2015, the “NCFM Decision”), compliance with the CGC is mandatory for "public interest entities." Moldova's Law on Capital Market (Article 6) defines a "public interest entity" as “a bank, an insurance company, an optional pension fund” or "an issuer whose securities are admitted to trading, at the request or with the agreement of the issuer, on a regulated market." According to the government, some SOEs are listed and would be required to comply with the CGC in accordance with the NCFM Decision. The government stated that in 2022, there were 30 public interest companies, of these 15 were listed companies.

## 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 |

A – non-compliant. CGC does not identify an authority with a clear mandate to monitor compliance with the code. The government cited the NCFM as such authority with reference to the Law on NCFM (Articles 4, 8, 9) which establish its authority vis-à-vis market participants and its power to require them to report to it regularly. However, the aforementioned law does not clearly define NCFM’s mandate to monitor compliance with the CGC. This has been confirmed by NCFM. However, NCFM stated that they have broad authority under the Law on NCFM (Articles 8 and 9) and they interpret that monitoring compliance with the CGC falls under the scope of this broad mandate. The National Bank of Moldova, the supervisory authority for banks, stated that pursuant to the Law on the Activity of Banks, a bank shall have a solid governance framework that includes a Corporate Governance Code, a clear organizational structure with well-defined, transparent and consistent lines of responsibility, effective procedures for identifying, managing, monitoring and reporting the risks to which the bank is or may be exposed, adequate internal control mechanisms, including rigorous administrative and accounting procedures, remuneration policies and practices that promote and are consistent with sound and effective risk management.

B – non-compliant. The government provided the monitoring team with a number of documents to demonstrate that the monitoring by NCFM is conducted in practice. However, it is not clear from their content that monitoring is conducted in practice pursuant to the benchmark.

The National Bank stated that as part of its annual review and evaluation process, it reviews arrangements, strategies, processes and mechanisms implemented by each bank to comply with the Law on the activity of banks and the normative acts issued by the National Bank of Moldova (Article 100 Law on the Activity of Banks). According to the National Bank, during its on-site inspections, it performs deep dive assessments of the risky areas identified during the review and evaluation process. The National Bank also reported having assessed the adequacy of internal control functions (which is part of corporate governance) at 10 banks over the last two years. However, no evidence has been provided to the monitoring team to confirm this.

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

### *Assessment of compliance*

## Benchmark 4.2.1.

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

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

A – compliant. In line with the relevant international standard, Article 3 of Moldova's AML Law defines a beneficial owner as "natural person ultimately controlling another natural person or who owns or ultimately controls a legal entity or the beneficiary of an investment company or the administrator of an investment company or the person on whose behalf a transaction is carried out or an activity and/or who owns directly or indirectly the ownership right or control over at least 25% of the shares or voting rights of the legal entity or of the assets under fiduciary administration."

B – non-compliant. Moldova's AML Law (Article 14(3)) prohibits registration of legal entities and individual entrepreneurs that fail to present to the registering authorities information about their beneficial owners. There is an obligation to have updated information on beneficial owners, but the law does not provide a time limit for providing such updated information to the relevant authorities. The government stated that this has been amended with the adoption of the amendments of the AML Law in 2023 to implement the 5th EU AML Directive, Law no. 66/2023. Given that the amendment was adopted in 2023, it falls outside of the scope of the current monitoring round. Under the Law on State Registration of Legal Entities and Individual Entrepreneurs (Article 33), companies are required to provide the state registry with information about their beneficial owners, including their first and last names, personal ID number, address and phone number. There is no requirement in the relevant provision to also provide information regarding the beneficial owner's month and year of birth, nationality, or the nature and the extent of the beneficial interest held. Conversely, model forms that are used to submit information about the beneficial owner(s) to the Public Services Agency do ask for this information.

C – compliant. Article 35 of the Law on State Registration of Legal Entities and Individual Entrepreneurs identifies the Public Services Agency as the body responsible for handling the registration and maintaining the state registry (which must contain information about beneficial owners of companies, as described in element B above). Additionally, the AML law (Article 14) establishes the responsibility of the Public Services Agency to collect beneficial ownership information. Models of Information about the beneficial owner(s) are placed on the official website of the Public Services Agency (a link to one example of a form:

https://www.asp.gov.md/sites/default/files/servicii/e-servicii/formulare-tip/2/alte/Formularul-BE-1.pdf). The information about the beneficial owner(s) is completed by the founder/associate, who meets the criteria specified in the notion of beneficial owner in accordance with the provisions of Law no. 308/2017 or, as the case may be, by his representative (authorized by a power of attorney authenticated as established by law), in accordance with operational procedures established by the state registration body in departmental normative acts. According to Moldova, the information is also collected in practice: 43,953 companies had provided it by the end of 2022 and 49,395 companies -- as of 30 June 2023.

## 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 | x |
| C. Beneficial ownership information is available to the general public free of charge | ✓ |

A – compliant. The Law on State Registration of Legal Entities and Individual Entrepreneurs (Article 341) requires the Public Services Agency to ensure public access to information from the State Registry through the dedicated website. Only information about beneficial owners' first and last names and country of residence is open to the general public (although more information is collected via the model forms of the Public Services Agency). According to Moldova, the information is available on the website of the Public Services Agency, at the following link: https://www.asp.gov.md/sites/default/files/informatii-utile/date-statistice/2023/rsud/company.xlsx. However, Moldova informed the monitoring team that as of 1 July 2023 with the amendment of the AML/CFT Law (Law no. 66/2023), the beneficial owner's name, surname, country of residence is not anymore publicly available on the website of the Public Services Agency. These changes to the law were done to implement the EU Court of Justice's Decision (C37/20). Since these amendments were adopted outside the timeframe of the current assessment, their impact will be evaluated during the next monitoring round.

B – non-compliant. In 2022, company information (including information on beneficial owners) was published as a single Microsoft Excel file. While it was possible to search for information within this single file, such an arrangement did not meet the criteria of the benchmark which requires a search functionality on the website and the possibility of indexing by search engines. As mentioned under benchmark A above, due to changes to AML/CFT law, specific information on beneficial owners will not be published anymore as of 1 July 2023. Since these amendments were adopted outside the timeframe of the current assessment, they will be evaluated during the next monitoring round.

C – compliant. The information described in the elements A and B above is available to the general public free of charge.

## Benchmark 4.2.3.

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

Non-compliant. Article 14 of the AML law requires the Public Services Agency to verify the beneficial ownership information collected through the registration process. However, the government has acknowledged that this concerns a very basic type of verification, rather than an in-depth analysis of the disclosures which this benchmark refers to. There is currently no procedure for risk-based or random verification of the beneficial ownership information which companies present upon registration and the monitoring team did not receive any examples of verification conducted in practice. The government stated that with the adoption of the amended AML Law in 2023 (Law no. 66/2023) a second layer of checks has been introduced. This will be assessed for compliance during the next monitoring round.

## 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 |

A – non-compliant. According to Moldova, the primary sanction that is applied in the event of a company's failure to provide beneficial ownership information as required by the law is refusal of registration. Currently, there is no authority to impose sanctions, but under the new amendments of the AML Law (Law no. 66/2023) the government mentioned that the applicable authorities will be able to impose administrative fines (ranging from 1,000 – 1,500 conventional units).

B – non-compliant. See above under A. There have been no administrative sanctions or criminal convictions in 2022.

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

### *Background*

Moldova does not have a dedicated institution - an out-of-court mechanism to address complaints of companies related to violation of their rights by public authorities as stipulated in Benchmark 3.1. Moldova has the People's Advocate, a separate ombudsfunction for human rights and children's right. In 2020, the government proposed a draft to amend the Law of the People's Advocate to create the "Ombudsman for the rights of entrepreneurs". The People's Advocate, OSCE and the Venice Commission criticised aspects of the draft. The initiative has been abandoned and it does not seem that there will be a business ombudsfunction set up in Moldova.

The People's Advocate mentioned during a meeting with the monitoring team that, starting from August 2023, legal persons will also be able to apply to the People's Advocate in relation to human rights violations. However, it is not clear yet how this will be set up and an appropriate mechanism needs to be put in place. The compliance of this new mechanism with Indicator 4.3 will be assessed in the next monitoring cycle.

### *Assessment of compliance*

## Benchmark 4.3.1.

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

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

A-C – non-compliant. Moldova does not have such institution.

## 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 |

A-B – non-compliant. Moldova does not have such institution and has not provided the monitoring team with any information regarding the publication of any relevant reports.

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

### *Background*

Law nr. 1134/1997 on Joint Stock Companies (in case SOEs are joint stock companies, "Law on JSC"), Law nr. 246/2017 on State and Municipal Enterprises ("Law on SOE"), and Government Decree 484/2019

providing normative acts on the implementation of Law on SOE ("Decree 484") provide the primary legal framework governing SOEs in Moldova for 2022.

Moldova identified the following Joint Stock Companies ("JSC") and State Enterprises ("SE") as the country's five largest SOEs:

SOE 1: JSC Moldtelecom ("Moldtelecom")
SOE 2: JSC Franzeluta ("Franzeluta")
SOE 3: SE "Fabrica de Sticla" ("Chisinau Glass Factory").
SOE 4: SE "Poșta Moldovei" ("Moldova Post"); and
SOE 5: SE "Calea Ferată din Moldova" ("Moldova Railways").

### *Assessment of compliance*

## Benchmark 4.4.1.

Supervisory boards in the five largest SOEs:

| Element | Compliance | | | | |
|---|---|---|---|---|---|
| | **Moldtelecom** | **Franzeluta** | **Chisinau Glass Factory** | **Moldova Post** | **Moldova Railways** |
| A. Are established through a transparent procedure based on merit, which involves online publication of vacancies and is open to all eligible candidates | X | X | X | X | X |
| B. Include a minimum of one-third of independent members | X | X | X | X | X |

In 2022, board members were appointed upon proposals from the Ministry of Finance, the Ministry of Economic Development and Digitalisation, the Ministry of Infrastructure and regional Development and the Public Property Agency ("the PPA") and the labour collective (in case of state enterprises) (respectively pursuant to Article 65 of Law on JSC and Articles 7 and 8 of the Law on SOEs).

Based on the information received by the monitoring team, in 2022, the legislation did not contain blanket provisions requiring SOEs to appoint their board members through a transparent procedure or to allocate any number of places on their boards for independent members. There were board appointments in 2022, but the information provided is insufficient to assess the procedure applied during the appointments (see table below).

As of May and June 2023, there have been developments that would be of interest for the next monitoring round: (i) amended Article 8 of the Law on SOEs stipulates that independent board members may be selected; and (ii) Government Decision 209/2023 provides rules on the selection of candidates for the position of board members at SOEs. Given that these were outside of the scope for the current monitoring round (focus on 2022), they have not been assessed.

| **SOE** | Compliance | Explanation |
|---|---|---|
| Moldtelecom | **A. Non-compliant** | In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently |

| | | |
|---|---|---|
| | **B. Non-compliant** | transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members. |
| Franzeluta | **A. Non-compliant**<br><br>**B. Non-compliant** | In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members. |
| Chisinau Glass Factory | **A. Non-compliant**<br><br>**B. Non-compliant pliant** | In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members. |
| Moldova Post | **A. Non-compliant**<br><br>**B. Non-compliant pliant** | In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members. |
| Moldova Railways | **A. Non-compliant**<br><br>**B. Non-compliant pliant** | In 2022, 7 board members were appointed by the general meeting of shareholders. The procedure is insufficiently transparent nor has there been proof provided that the selection was merit-based. No information was provided by the government on the independence of any board members. |

## Benchmark 4.4.2.

CEOs in the five largest SOEs:

| Element | Compliance | | | | |
|---|---|---|---|---|---|
| | Moldtelecom | Franzeluta | Chisinau Glass Factory | Moldova Post | Moldova Railways |
| A. Are appointed through a transparent procedure which involves online publication of vacancies and is open to all eligible candidates | ✓ | ✓ | N/A | N/A | N/A |
| B. Are selected based on the assessment of their merits (experience, skills, integrity | ✓ | ✓ | N/A | N/A | N/A |

Decree 484 sets out the applicable rules for the selection and appointment of CEOs for SOEs. In 2022, there were CEO appointments at Moldtelecom and Franzeluta.

The table below details the compliance by each of the five SOEs in relation to elements A and B:

| SOE | Compliance | Explanation |
|---|---|---|
| Moldtelecom | **A. Compliant**<br><br>**B. Compliant** | The announcement concerning the vacancy for the CEO's position was posted on the company's and the PPA's websites on 15 August 2022 and applications were accepted until 16 September 2022. The documents made available to the monitoring team indicate that the procedure was open to all eligible candidates and transparent. The competition rules published along with the vacancy include detailed selection criteria which meet element B of this benchmark. |
| Franzeluta | **A. Compliant**<br><br>**B. Compliant** | The announcement concerning the vacancy for the CEO's position was posted on the company's and the PPA's websites on 9 September 2022 (including the rules of the competition) and applications were accepted until 26 September 2022. The documents made available to the monitoring team indicate that the procedure was open to all eligible candidates and transparent. The competition rules published along with the vacancy include detailed selection criteria which meet element B of this benchmark. |
| Chisinau Glass Factory | **Not applicable** | No CEO appointment took place in 2022 |
| Moldova Post | **Not applicable** | No CEO appointment took place in 2022 |
| Moldova Railways | **Not applicable** | No CEO appointment took place in 2022 |

## Benchmark 4.4.3.

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

| Element | Compliance | | | | |
|---|---|---|---|---|---|
| | Moldtelecom | Franzeluta | Chisinau Glass Factory | Moldova Post | Moldova Railways |
| A. A compliance programme that addresses SOE integrity and prevention of corruption | ✓ | X | X | ✓ | X |
| B. Risk-assessment covering corruption | X | X | X | ✓ | ✓ |

The table below details the compliance by each of the five SOEs in relation to elements A and B:

| SOE | Compliance | |
|---|---|---|
| | **A. Compliance programme that addresses SOE integrity and prevention of corruption** | **B. Risk-assessment covering corruption** |
| Moldtelecom | **Compliant.** The company has amongst others an extensive Corporate Governance Code (Cod-de-GC_S-AMoltelecom_redactratfinal.pdf (moldtelecom.md), Code of Ethics (which could not be translated) and the work instruction for the prevention, detection and reaction to acts of corruption and other illegalities (Code IL-09-01/02). | **Non-compliant.** no information was provided to the monitoring team. |
| Franzeluta | **Non-compliant.** The company does not have a compliance programme, but it has a Code of Ethics (its Corporate Governance Code) that covers integrity and anti-corruption topics (Cod de guvernare corporativa.pdf (franzeluta.info)) (see also benchmark 4.4). | **Non-compliant.** The company has not conducted risk assessment. |
| Chisinau Glass Factory | **Non-compliant.** The company does not have a compliance programme. | **Non-compliant**. The company has not conducted risk assessment. |
| Moldova Post | **Compliant**. The company has established an Integrity Plan which identifies possible risks and necessary measures to mitigate these and the relevant persons responsible. Furthermore, the company has a code of | **Complaint.** It seems that the company has conducted a risk assessment covering corruption, because it shared a copy of the Integrity Plan that the company has adopted which also covered corruption risk and actions points and responsible |

| | | |
|---|---|---|
| | conduct and internal regulations with rules on conflict of interest, gifts and hospitality and ethical conduct. It also has among others procedures in place relating to purchases, internal controls on procurement, it provides training about integrity-related topics. It is understood that the company established a compliance department to promote a compliance culture, but this was not immediately apparent for the information provided | departments to deal with the action points within the set deadlines. |
| Moldova Railways | **Non-compliant**. The company does not have a compliance programme, but it has a Code of Conduct that covers integrity and anti-corruption topics and a separate regulation for gifts and hospitality. | **Compliant**. It seems that the company conducted a risk assessment covering corruption in 2022, because it shared a copy of the Integrity Plan (for 2023 and beyond) that the company has adopted which also covered corruption risk and actions points and responsible departments to deal with the action points within the set deadlines. |

## Benchmark 4.4.4.

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

| Element | Compliance | | | | |
|---|---|---|---|---|---|
| | Moldtelecom | Franzeluta | Chisinau Glass Factory | Moldova Post | Moldova Railways |
| A. Rules on gifts and hospitality | ✓ | ✓ | X | ✓ | ✓ |
| B. Rules on prevention and management of conflict of interest | ✓ | ✓ | 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 |

The table below details the compliance by each of the five SOEs in relation to each elements of this benchmark:

| SOE | Element | Compliance/Explanation |
|---|---|---|
| Moldtelecom | A. Rules on gifts and hospitality | **Compliant**. The Code of Ethics has rules on gifts and hospitality (pages 8-10). |
| | B. Rules on prevention and management of conflict of interest | **Compliant**. The corporate governance code (Chapter VI), the regulations regarding the procurement of goods, works, services by the Company (art 5) as well as the Code of Ethics (pages 6-8) have rules on conflict of interest. |
| | C. Charity donations, sponsorship, political contributions | **Non-compliant**. In the corporate governance code it is stated that sponsorships are carried out in full transparency pursuant to Law no. 1420/2002 regarding philanthropy and sponsorship, as well as point 1 and point 6 of Government Decree 110/2011, and that, in relation to political donations, staff are aware of the provisions of Law no. 294/2007 on political parties, as well as other related legal regulations.<br><br>However, the legislative acts cited in the code do not contain provisions designed to address the specific risks that SOEs could face as far as sponsorship, political contributions and |

| | | |
|---|---|---|
| | | donations are concerned, so a reference to them cannot be considered sufficient for compliance. |
| | D. Due diligence of business partners | **Non-compliant.** The government stated that each participant in a tender is obligated to provide information that allows for a check of the participant's liquidity, experience and beneficial ownership, but this is not anti-corruption due diligence. Moreover, the company does not seem to have procedures and processes in place for the selection of all its business partners and third parties, including authorised agents. |
| | E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme | **Non-compliant**. There is no explicit wording as to who within the company has the responsibility for oversight and implementation of the anti-corruption compliance programme. The corporate governance code states that "the company will manage the most important risks inherent in its specific activity, as well as define the basic principles of risk management, especially those of *fraud and corruption*, according to established procedures."<br><br>It seems that it is the responsibility of the Board, which is "responsible for the total risk management process, (…) through a stable internal mechanism (Art. 9.16). It is also stated that the audit committee monitors "efficiency of the internal control, internal audit and risk management system within the company" (Art. 9.7). Reference has been made to the duties in Regulations of 12 November 2019, but these have not been provided and could therefore not been assessed by the monitoring team. The government has stated that with the implementation of the new Law on the integrity of whistleblowers (No 165/2023), the responsibilities within the company for the supervision and implementation of the anti-corruption programme will be established. This will be assessed in the next monitoring round. |
| Franzeluta | A. Rules on gifts and hospitality | **Compliant.** The company's CGC contains rules on gifts and hospitality (rule 6). |
| | B. Rules on prevention and management of conflict of interest | **Compliant.** The company's CGC contains rules on conflict of interest (rule 7 and 8). |
| | C. Charity donations, sponsorship, political contributions | **Non-compliant**. The code does not contain specific rules on this topic. Instead, it establishes the general principle of integrity (rule 3(d)) and the prohibition of bribery / corruption (rule 4). |
| | D. Due diligence of business partners | **Non-compliant.** The CGC states that the company's staff should promote the rules set out in the code to the business partners (rule 5). However, the code does not contain any procedure/ processes on due diligence in relation to business partners. |

| | | |
|---|---|---|
| | E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme | **Non-compliant**. The code states that an official responsible for ethics will be appointed. However, nothing is stated in relation to the oversight and implementation of the anti-corruption compliance programme. |
| Chisinau Glass Factory | A. Rules on gifts and hospitality | **Non-compliant** (elements A-E) The company does not have a compliance programme. |
| | B. Rules on prevention and management of conflict of interest | |
| | C. Charity donations, sponsorship, political contributions | |
| | D. Due diligence of business partners | |
| | E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme | |
| Moldova Post | A. Rules on gifts and hospitality | **Compliant**. The regulation on gifts stipulates that employees shall not “carry out commercial activities, which could directly or indirectly cause damage to the economic interests of the Company, which could lead to the employee obtaining undue benefits (…) (Article 15(vv)). Moreover, the Code of Conduct contains rules on gifts and hospitality (art. 3.4). It was also mentioned that the company established a register to record gifts (according to Annex no. 3 to Government Decision no. 116 of 26.02.2020 regarding the legal regime of gifts). |
| | B. Rules on prevention and management of conflict of interest | **Compliant**. The Code of Conduct contains rules on conflict of interest ( art. 4). Furthermore, it was also mentioned that the company established a register to record declarations regarding conflicts of interest (in accordance with Annex no. 4 to Law no. 133 of 17.06.2016 "Regarding the declaration of wealth and personal interests"). |

| | | |
|---|---|---|
| | | |
| | C. Charity donations, sponsorship, political contributions | **Non-compliant**. The company does not seem to have any relevant rules. |
| | D. Due diligence of business partners | **Non-compliant**. The company does not seem to have any relevant rules. |
| | E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme | **Non-compliant**. Based on the information provided, it is not clear who has the responsibility for oversight and implementation of anti-corruption compliance programme. It is understood that a compliance department was established, but this could not be verified on the basis of the provided information. |
| Moldova Railways | A. Rules on gifts and hospitality | **Compliant**. The Company has a separate regulation on gifts and hospitality. |
| | B. Rules on prevention and management of conflict of interest | **Complaint**. The Code of Conduct contains rules on conflict of interest (Art. 4.6). |
| | C. Charity donations, sponsorship, political contributions | **Non-compliant**. The company does not seem to have any relevant rules. |
| | D. Due diligence of business partners | **Non-compliant**. The company does not seem to have any relevant rules. |
| | E. Responsibilities within the company for oversight and implementation of the anti-corruption compliance programme | **Non-compliant**. Based on the information provided, the company does not seem to have rules on the responsibility for oversight and implementation of anti-corruption compliance programme. |

## Benchmark 4.4.5.

The five largest SOEs disclose via their websites:

| Element | Compliance | | | | |
|---|---|---|---|---|---|
| | Moldtelecom | Franzeluta | Chisinau Glass Factory | Moldova Post | Moldova Railways |
| A. Financial and operating results | ✓ | ✓ | ✓ | ✓ | ✓ |
| B. Material transactions with other entities | X | X | X | X | X |
| C. Amount of paid remuneration of individual board members and key executives | X | X | X | X | X |
| D. Information on the implementation of the anti-corruption compliance programme | X | X | X | ✓ | X |
| E. Channels for whistleblowing and reporting anti-corruption violations | ✓ | X | X | X | ✓ |

| | Compliance | |
|---|---|---|
| SOE | Element | Explanation |
| Moldtelecom | A. Financial and operating results | **Compliant**. The Annual report 2022 is published on the website: https://moldtelecom.md/files/Situatii%20financiare%20a.2022.pdf. |
| | B. Material transactions with other entities | **Non-compliant**. The information is not disclosed. |
| | C. Amount of paid remuneration of individual board members and key executives | **Non-compliant**. The Annual report 2022 contains the total amount for salaries for members of administrative bodies, censors and the board of directors, not the paid remuneration of individual board members (page 36). |
| | D. Information on the implementation of the anti-corruption compliance programme | **Non-Compliant**. Currently there is no anti-corruption compliance programme, but it is understood that one is being developed. |
| | E. Channels for whistleblowing and reporting anti-corruption violations | **Compliant**. The channels are listed in the work instruction for the prevention, detection and reaction to acts of corruption and other illegalities (Code IL-09-01/02), which is published on the website. |
| Franzeluta | A. Financial and operating results | **Compliant**. The information is available on the website: https://franzeluta.info/despre-noi/rapoartee.html. Not all results for 2022 are available yet. |

| | | |
|---|---|---|
| | B. Material transactions with other entities | **Non-compliant**. A link was provided to the monitoring team where information is supposedly available (https://franzeluta.info/despre-noi/rapoartee.html.). However, link refers to a website with multiple reports in Romanian (which could not be translated) and it has not been specified which report would contain relevant information. The monitoring team could not verify compliance with this benchmark.. |
| | C. Amount of paid remuneration of individual board members and key executives | **Non-compliant**. The information is supposedly available on the website of the National Integrity Authority (Home \| National Integrity Authority (ani.md)), but no specific link to the information was provided nor was the information readily available on the English version of the website. The information does not seem to be available on the company's website. |
| | D. Information on the implementation of the anti-corruption compliance programme | **Non-compliant**. The information does not seem to be disclosed on the website. |
| | E. Channels for whistleblowing and reporting anti-corruption violations | **Non-compliant**. Reference is made to the general Romanian website (https://franzeluta.info/despre-noi/rapoartee.html) without further information on where the information can be found. The monitoring team could not find it to verify. |
| Chisinau Glass Factory | A. Financial and operating results | **Compliant**. The financial statements for 2022 are published on the website: https://glass.md/category/postari/rapoarte/. |
| | B. Material transactions with other entities | **Non-compliant**. The financial statements for 2022 only specify the number of procurement contracts concluded in 2022. Form the information it is not clear which transactions are material and with which entities these were concluded. The monitoring team could thus not verify compliance with this benchmark. |
| | C. Amount of paid remuneration of individual board members and key executives | **Non-compliant**<br>The Management Report and Financial Statements for 2022 contain only the total amount for salaries for the board of directors, not the paid remuneration of individual board members. |
| | D. Information on the implementation of the anti-corruption compliance programme | **Non-compliant**. The information does not seem to be disclosed on the website. |
| | E. Channels for whistleblowing and reporting anti- | **Non-compliant**. The information does not seem to be disclosed on the website. |

| | | |
|---|---|---|
| | corruption violations | |
| Moldova Post | A. Financial and operating results | **Compliant**. The financial and operating results were provided for 2022 (https://static-api.posta.md/api/v1/storage/09/08/2023/Situatii_Financiare_anul_2022.pdf). |
| | B. Material transactions with other entities | **Non-compliant**. The information does not seem to be disclosed on the website. |
| | C. Amount of paid remuneration of individual board members and key executives | **Non-compliant**. A link was provided to the monitoring team where information is supposedly available: IFRS_situatii_financiare_individuale_2021.pdf (posta.md). However, the information is not readily available in English (nor translatable given the format), so could not be verified by the monitoring team. |
| | D. Information on the implementation of the anti-corruption compliance programme | **Compliant**. The management report for 2022 provides an update on the integrity plan and any action points that are being implemented. |
| | E. Channels for whistleblowing and reporting anti-corruption violations | **Non-compliant**. A link was provided to a page on the website (Posta Moldovei - Reclamații și petiții), where complaints and petitions can be submitted seemingly in relation to quality of the services by the company and any issues with the post sent within Moldova and abroad. It is not advertised as a channel for whistleblowing complaints. Although there seems to be no issues from a technical aspect for whistle blowers to report issues, it is unlikely that they would feel safe and comfortable to make a sensitive reports via this channel, which does not guarantee confidentiality |
| Moldova Railways | A. Financial and operating results | **Compliant**. The financial statements for 2022 are published on the website: Calea Ferata din Moldova (railway.md). |
| | B. Material transactions with other entities | **Non-compliant**. A link is provided to the website where information is supposedly available: Calea Ferata din Moldova (railway.md). However, the information is not readily available in English, so could not be verified by the monitoring team. |
| | C. Amount of paid remuneration of individual board members and key executives | **Non-compliant**. The information does not seem to be disclosed on the website. |

| | | |
|---|---|---|
| | D. Information on the implementation of the anti-corruption compliance programme | **Non-compliant**. The relevant information has not been published. It is worth noting, however, the Integrity Plan (for 2023 and beyond) is available on the website (http://www.railway.md/?l=ro&h=BG0l8rJIUvC473DzC/fGAYEgcEsPsKBC) |
| | E. Channels for whistleblowing and reporting anti-corruption violations | **Compliant**. The information on the company's hotline is published on its website : http://www.railway.md/?l=ro&h=BG0l8rJIUvC473DzC/fGAYEgcEsPsKBC. |

# 5 Integrity in public procurement

The public procurement system in Moldova is the main mechanism for ensuring transparency, competition, and value for money in the acquisition of goods, services, and works by public entities. The public procurement system operates under the legal framework governed by the Law on Public Procurement and associated regulations. These laws aim to harmonize Moldova's procurement practices with international standards and principles, promoting fairness, efficiency, and integrity.

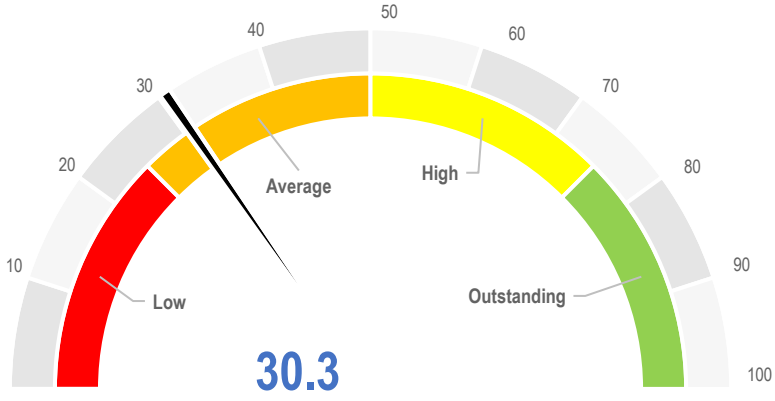
The Ministry of Finance is the primary governmental body in charge of public procurement policies and regulations, as well as the strategy for their development. The dedicated Service for Public Procurement Policies within the Ministry is responsible for development of legislative acts and regulatory framework on public procurement. The Ministry has created and maintains a nationwide e-procurement platform MTender, which provides electronic public procurement records. However, the system does not currently cover all procurement methods available under the law, while centralised publication of up-to-date procurement data remains a challenge and most information is not currently published in a machine-readable format.

The Public Procurement Agency (PPA), a specialised body subordinated to the Ministry is in charge of implementing the public procurement policy, whilst the State Treasury, also subordinated to the Ministry, is in charge of registering public contracts and making corresponding payments. The independent National Agency for the Resolution of Complaints is reviewing

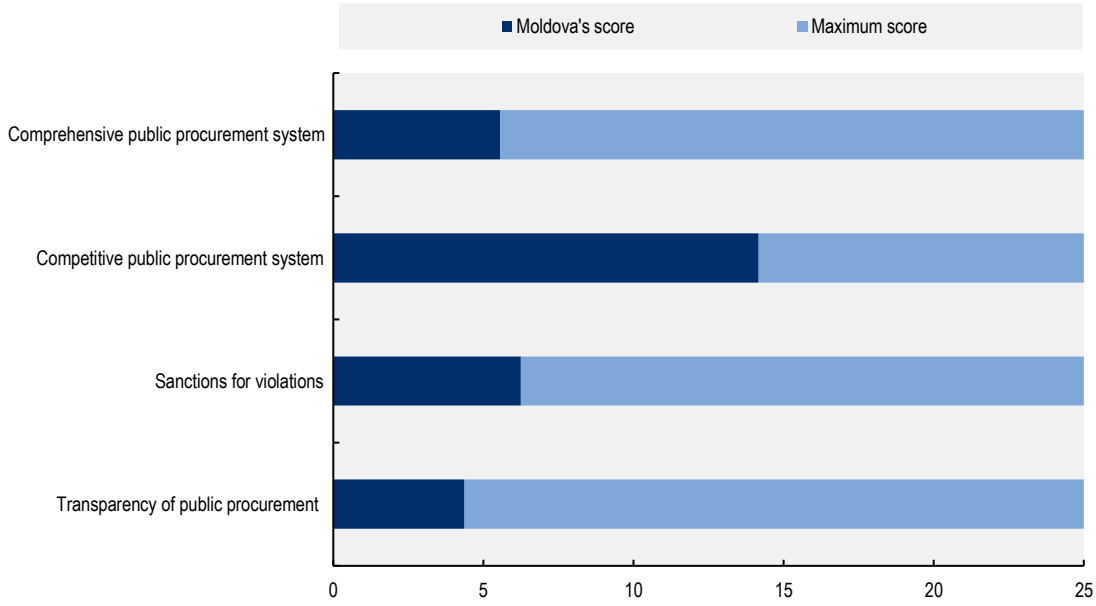
and taking decisions on complaints from participants in procurement processes and other parties concerned.

Moldova has implemented various measures to combat corruption in public procurement. However, there are gaps in terms of sanctions for violation of COI rules, both in law and in practice, while the provisions on mandatory debarment from public procurement of natural and legal persons convicted for corruption are not enforced effectively in practice.

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



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



## Indicator 5.1. The public procurement system is comprehensive

### *Background*

The core public procurement framework of Moldova is largely harmonised with EU Procurement Directives of 2014. The Public Procurement Law of Moldova (PPL), adopted in 2015, establishes a comprehensive legal framework for the procurement of works, goods, and services, including consulting services. PPL is aligned with the Agreement on Government Procurement of the World Trade Organization (WTO GPA), which Moldova is a party to. Since acceding to the GPA, Moldova has continued to refine procurement legislation. In addition to PPL in 2020 Moldova adopted a law regulating procurement by utilities (LPU).

The public procurement system in Moldova allows for various procurement methods, application of which depends on the nature and complexity of the procurement, ensuring appropriate competition and efficiency.

### *Assessment of compliance*

#### Benchmark 5.1.1.

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

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

A – non-compliant. Although the utility sector (oil and gas, heat supply, energy, water supply and wastewater, transport and postal services) companies are regulated by LPU, procurement by state- and municipality-owned enterprises is not subject to PPL or LPU. It is partially covered by the regulation on procurement by SOEs adopted by the Government in 2020, which does not seem to apply in respect of procurement by municipal enterprises.

PPL Article 5 provides a list of exclusion grounds, which appear to be reasonable, except for telecommunication contracts.

LPU has a large list of exceptions covered by Articles 16 to 26, with the most questionable provisions in respect of affiliates (LPU Article 24), which may provide for transfer pricing and lead to unjustified tariff increases, creating corruption grounds.

B – compliant. Procurement of works, goods and services by utilities and natural monopolies is covered by LPU. It was noted that the application of LPU is not controlled by PPA. According to CSOs, LPU is not always applied in practice, and when applied, its application is uneven due to the lack of respective secondary legislation.

C – compliant. PPL Article 6 requires application of the law in the national security and defence sectors, with some exceptions, listed in PPL Article 5. LPU Article 26 provides more restrictions in respect of procurement in national security and defence sector, but these restrictions seem to be limited to classified areas of such procurement.

## Benchmark 5.1.2.

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

Non-compliant. PPL Article 46 states that open and restricted tenders are the default procedures of public procurement and that other procedures can only be used in the cases established by the law. LPU does not set competitive procedures as default.

In respect of both PPL and LPU, the only exception from competitive processes is negotiated procedure without prior publication of an invitation (PPL Article 56 and LPU Article 40), which may be applied in limited cases. However, not all conditions in the PPL under which this procedure can be used are in line with the relevant international standards (such as the UNCITRAL Model Law on Public Procurement), while three out of five grounds listed in LPU Article 40 (Paragraph 3) also appear unreasonable.

## Benchmark 5.1.3.

| | Compliance |
|---|---|
| Public procurement procedures are open to foreign legal or natural persons | X |

Non-compliant. According to PPL Article 16 and LPU Article 29, public procurement in Moldova is open to foreign legal and natural persons, albeit on reciprocity principle. Moldova is a signee to the WTO GPA, therefore, by virtue of these agreements, public procurement is broadly open to a large group of countries.

At the same time participation in public procurement via e-procurement system MTender requires e-signature, as per PPL Article 33, sub-paragraph 14. Similar requirement is also stated in Law 124/2022 on electronic signature and electronic documents, according to which electronic signatures issued by authorities of other states are not recognized, unless the is bilateral or multilateral agreement with other states. At the time of assessment, it appears that Moldova only recognised e-signatures of EU countries.

According to the authorities, only 41 contracts (0.23%) out of 18,096 in total, were awarded to foreign economic operators in 2022. The relatively low level of foreign companies' participation could be explained by the geographical location of the country, its proximity to Ukraine that in 2022 was the target of Russia's war of aggression, use of the official national language and e-signature constraints mentioned above, rather than legal restrictions of the procurement system.

## Indicator 5.2. The public procurement system is competitive

### *Assessment of compliance*

## Benchmark 5.2.1.

Direct (single-source) contracting represents:

| Element | Compliance |
|---|---|
| A. Less than 10% of the total procurement value of all public sector contracts (100%) | B (70%) |
| 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%) | |

Compliance rating: 70%

Contracts awarded directly represented 12% of the total procurement value in 2022. 1,040 contracts worth a total of MDL 1,647,036,015 were signed without a competitive process in Moldova in 2022. It represented 6% of the total number of contracts (18,096) and 12% of their cumulative value of MDL 13,682,388 036.

It should be noted that the statistical data above only include contracts signed under PPL. No comprehensive statistics are available for the contracts signed under the LPU.

According to CSOs, a relatively large share of single-source procurement is a result of inefficient planning by procuring entities and their abuse of the legislative provision allowing the use of such a method in case of unforeseen circumstances or for urgent needs, albeit PPL Article 56 does not allow the use of such method due to mishandlings by the procuring entities. The authorities emphasised that an increase in direct contracting in 2022 (as compared to the level of 2021, when it was as little as 5.63% of the total value of public procurement), was due to the refugee influx, resulting from the war in Ukraine.

## Benchmark 5.2.2.

The average number of proposals per call for tender is:

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

Compliance rating: 100%

Based on the statistical data for 2022, the average number of proposals per an open tender was 3.8 and per a request for quotation – 3. The statistical data were provided only in respect of contracts signed under PPL. No data are available for contracts signed under LPU.

## Benchmark 5.2.3.

The threshold value for goods contracts:

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

Non-compliant (0%)

PPL Article 2 establishes the thresholds (procurement base unit) for small value acquisition of goods, works, and services, with the threshold for goods contracts in the amount of MDL 200,000 (about EUR 9,870, as per the exchange rate of 31 December 2022 but more than EUR 10,000 for large part of 2022).

LPU Article 1 establishes the thresholds (procurement base unit) for small value acquisition of goods, works, and services, with the threshold for goods contracts in the amount of MDL 800,000 (about EUR 39,480, as per the exchange rate of 31 December 2022).

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

#### *Assessment of compliance*

## Benchmark 5.3.1.

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

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

A – non-compliant. PPL Article 79 establishes comprehensive rules in respect of conflict of interest for the employees of the procuring entity and third parties involved in planning, preparing and conducting procurement procedure. On the other hand, LPU Article 34 has very basic provisions in respect of conflict of interest, while there are no provisions regulating conflict of interest in procurement by SOEs.

B – non-compliant. There are no targeted legal provisions establishing sanctions for violation of conflict of interest rules in public procurement neither in PPL nor in LPU, except for exclusion of a conflicted participant from the procurement procedure, or a conflicted evaluator from the evaluation process (PPL

Article 79, paragraph 3 in conjunction with PPL Article 19, paragraph (h); and PPL Article 79, paragraph 4 respectively). No evidence was presented that sanctions have been routinely applied either for the violation of procurement-specific COI provisions or Moldova's general COI provisions in the context of public procurement. According to CSOs, there is no effective monitoring of compliance with this provision in practice and many violations remain unnoticed.

C – non-compliant. PPL Article 79 provides reasonable provisions covering conflict of interests by private sector actors. Physical or legal persons that supported a procuring entity with the preparation of a procurement process can participate in it only insofar as their involvement does not distort competition. A procuring entity is required to deliver to other participants all information that such persons had access to in the process of preparing procurement process and shall disqualify the latter from the process if equal treatment of all participants cannot be ensured and if the persons fail to demonstrate that their involvement in the preparatory work does not distort competition. These provisions are further supported by PPL Article 19, which requires procuring entities to exclude from the procurement procedure any conflicted participant.

On the other hand, LPU does not have any provisions on conflict of interest of private sector actors. Moreover, LPU Article 24 provides for unregulated procurement from affiliates of a procuring entity.

## Benchmark 5.3.2.

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

Non-compliant. According to the authorities, in 2022 there were 18 convictions made in respect of corruption-related crimes in public procurement. However, no specific cases were presented to the monitoring team to verify the compliance with the benchmark.

## 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 | ✓ |
| B. All legal persons and affiliates of legal persons sanctioned for corruption offences | ✓ |

A – compliant. PPL Article 19 and LPU Article 67 establish mandatory debarment from the procurement procedures of any person convicted for corruption during the preceding five years. The debarment provisions of both laws also apply to the situations where the participant is affiliated with a person convicted for corruption, and such a person manages, represents, or controls the participant. In addition to the above, PPL requests rejection of an offer or annulment of a contract award (PPL Articles 69 and 71 respectively) in case when corruption activities were detected in the course of the procurement respective process.

B – compliant. The Criminal Code of Moldova has corporate criminal liability and in case of corruption related offences a legal entity, with the exception of public authorities, is criminally liable and may be fined, deprived of the right to exercise a certain activity or even liquidated.

As mentioned above both PPL and LPU establish mandatory debarment from the procurement procedures any person convicted for corruption during the preceding five years. Based on the laws' definitions, a

participant in a procurement process may be a physical or a legal person. The debarment provisions of both laws also apply to the situations where the participant is affiliated with a person convicted for corruption, and such person manages, represents or control the participant.

## Benchmark 5.3.4.

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

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

A – non-compliant. No information was provided in respect of the benchmark.

B – non-compliant. No information was provided in respect of the benchmark.

## Indicator 5.4. Public procurement is transparent

### *Background*

The Ministry of Finance of the Republic of Moldova working towards digitalising public procurement to ensure more transparent and efficient spending of the state budget of the Republic of Moldova. In 2018, a new digital government service – MTender – was launched (mtender.gov.md). It is intended that MTender will support public procurement from planning phase to completion of public contracts. However, not all intended functionalities are currently operational. MTender is a multi-platform networking system, which comprises a government-operated web portal and the Open Data central database unit. It is currently connected with four commercial electronic platforms supporting electronic tendering procedures for public sector and commercial clients.

### *Assessment of compliance*

## Benchmark 5.4.1.

An electronic procurement system, including all procurement methods:

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

A – non-compliant. PPL provides for the use of the electronic procurement system but does not mandate its use for all procurement methods. MTender e-procurement platform currently covers the following procurement methods: open tenders, negotiated procedure without prior notification, requests for quotations and framework agreements. Other procurement methods provided for by PPL and LPU are currently not covered by the e-procurement system. According to Government Order 870 issued in

December 2022 all contracting authorities/entities shall, subject to number of exceptions, use MTender for procurement of low value (under specified thresholds) contracts.

B – non-compliant. There are no legal barriers to the use of the e-procurement system and it should be accessible for all interested parties (PPL Article 16). However, there is an administrative barrier for accessibility of Moldovan procurement system. Participation in public procurement via e-procurement system MTender requires e-signature, while Law 124/2022 on electronic signature and electronic documents, suggests that electronic signatures issued by authorities of other states are not recognized, unless the is bilateral or multilateral agreement with other states. At the time of assessment, it appears that Moldova only recognises e-signatures of EU countries.

## Benchmark 5.4.2.

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

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

Below is the information on Moldova's compliance with each element:

A – non-compliant. Although procurement plans were not published centrally in the e-procurement system MTender. They were posted on the websites of individual procuring entities.

B – compliant. For the procurement methods covered by e-procurement platform, all the stages up to contract award are encompassed by the electronic system.

C – compliant. Appeals and decisions in respect of procurement processes were published on the website of the National Appeals Resolution Agency of Moldova (ansc.md). Moreover, a notice appeared in the e-procurement system when an appeal is lodged with the Agency.

D – non-compliant. The e-procurement system did not cover contract administration, including contracts modification.

## Benchmark 5.4.3.

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

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

Below is the information with Moldova's compliance with each element. Where the information in question is published online, it is available free of charge:

A – non-compliant. Procurement plans were not published centrally in the e-procurement system.

B – non-compliant. All tender notices, as per the requirement of PPL Article 29, were published in the Public Procurement Bulletin and on the website of the Public Procurement Agency. For the procurement processes covered by MTender, it allowed for the procurement documentation to be attached to the notice and to be accessible for free download. Other information was also available on MTender and on the PPA website. However, not all the procurement processes mentioned in PPL and LPU are currently covered by MTender.

C – non-compliant. For the procurement processes covered by MTender, evaluation reports prepared by the contracting authorities and sent to the PPA in line with PPL Article 69 were not published. However, PPA used the key data from award notices and published them in the system in a dedicated section (Awarded Contracts). The information included the contract price at award. Not all the procurement methods mentioned in PPL and LPU were covered by MTender.

D – compliant. Appeals and the results of their review are published on the website of the National Appeals Resolution Agency, from which they can be downloaded.

E – non-compliant. Information on contract implementation was not published centrally.

## 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 |

A – non-compliant. The information was not available in a machine-readable format.

B – non-compliant. The information is not available in a machine-readable format.

C – non-compliant. Most of the relevant information in available in a machine-readable format but evaluation results are only available as PDF files.

D – non-compliant. The information is not available in a machine-readable format.

E – non-compliant. The information is not available in a machine-readable format.

### Box 5.1. Good practice – Improvements in Legislation and E-Procurement

Moldova created a procurement system largely aligned with fundamental international standards modelled upon EU Procurement Directives. Moldova is a signee to WTO GPA.

Since 2018 Moldova has been using and permanently modernizing its e-procurement platform, which ensures a high level of completion under open tender procedure, which in turn covers 75 per cent of the cumulative value of contracts, processed via e-procurement system, that represents 5 per cent of the GDP of the country.

## 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 (a) incomplete coverage of procurement methods in MTender, (b) limited regulations and lack of efficient control over procurement by utilities, governed by LPU, or SOEs, and especially municipally owned enterprises, (c) defective planning with frequent late publications and frequent modifications, (d) use of targeted specification and requirements to be met by only one specific participant, under umbrella of competitive processes, (e) use of incomplete requirements and ambiguous evaluation criteria, (f) use of very short time for preparation of proposals, (g) disregard of qualification of participants, (h) lack of transparency and insufficient control over contract implementation with frequent contract price increases, (i) lack of timely of publication of debarment information. Many of the allegations and concerns seem to be supported by provided official statistics and reference cases.

# 6 Independence of judiciary

Moldova has launched significant judicial reforms since the change of government in 2021 with many changes being too recent to evaluate their practical application. To ensure integrity of judiciary, a Pre-Vetting Commission has been set up in 2022 to conduct integrity checks of the candidates for the judicial governance body – the Superior Council of Magistracy. The work of the Commission has not been completed by the end of 2022, resulting in Council and most of its subsidiary bodies having limited functionalities. The amended legal basis which regulates the set up and functioning of the Council and its subsidiary bodies is mostly in line with international standards. However, this remains on paper until the appointment of the new members and relaunch of the Council's and its subsidiary bodies' full scope of work. Judges in Moldova are now appointed for life through an open competition; the Superior Council of Magistracy proposes candidates for appointment to the President who may reject them on clear grounds and providing an explanation. Disciplining of judges is well regulated, however, some grounds for disciplinary liability are still ambiguous, leaving room for discretionary interpretation. Other challenges persist, including that the judiciary is understaffed, the judges are underpaid, creating a high risk for corruption and a growing backlog of cases.

Figure 6.1. Performance level for Independence of Judiciary is outstanding.

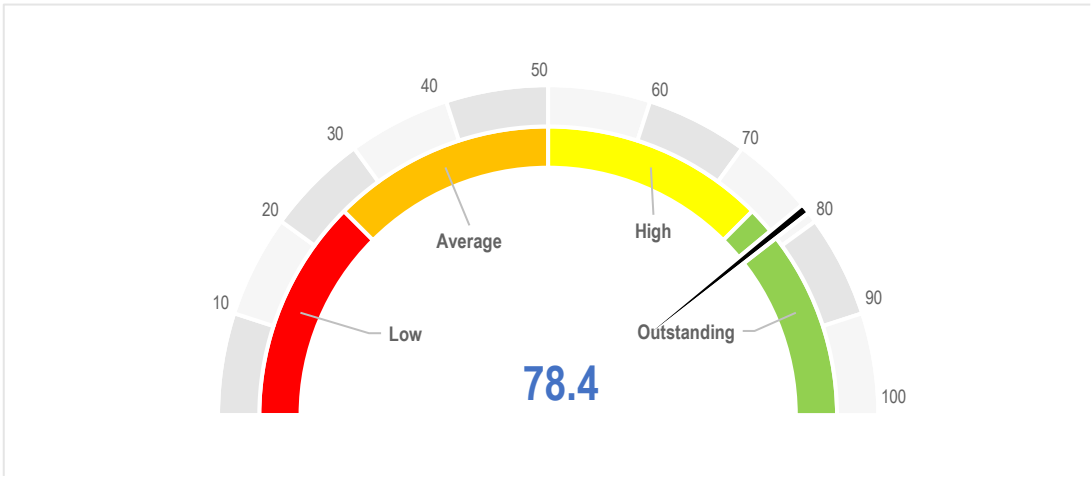
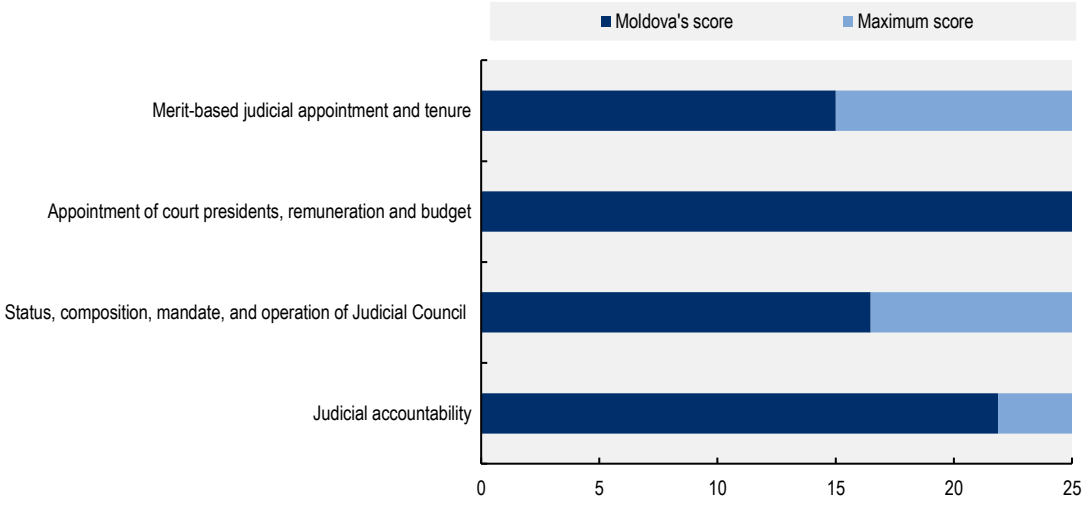



Figure 6.2. Performance level for Independence of Judiciary by indicators.




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

### *Background*

On 10 March 2022, Moldova adopted the Law amending the selection procedure for members of self-governing bodies of the judiciary and the prosecution service by introducing a mandatory integrity evaluation (the so-called pre-vetting) of candidates for the members of Superior Council of Magistracy (SCM), Superior Council of Prosecutors (SCP) and their specialised bodies. This evaluation was to be conducted by the Independent Integrity Assessment Commission – the "Pre-Vetting" Commission. At the end of the evaluation procedure, the "Pre-Vetting" Commission was to issue reasoned decisions regarding whether the candidates can be admitted to the relevant elections or the competitions. In April 2022, the "Pre-Vetting" Commission was established, consisting of six members – three appointed at the proposal

of the development partners of Moldova and three at the proposal of the parliamentary factions. The Commission started to work in June 2022 by launching checks of ethical and financial integrity of the candidates for the SCM from among judges.

At the end of 2022, the "Pre-Vetting" Commission has not completed this evaluation. The Law introducing this procedure was amended and the Commission's tenure was prolonged until June 2023. Consequently, in 2022, the Superior Council of Magistracy had only four out of 12 members and others could not be selected. The Superior Council of Magistracy functioned in its reduced composition until the decision of the Constitutional Court from 7 April 2022. After this date, the Superior Council of Magistracy had the operational mandate to decide on the organizational matters and could make no decisions related to judge's career, including appointment, transfer, promotion, or disciplinary sanctions. The two of the three subsidiary bodies of the SCM have been similarly non-functional in 2022 since autumn of 2021 – namely, the College for the Selection and Career of Judges, and the College for the Performance Evaluation of Judges; only the Disciplinary Board of Judges functioned in 2022.

With the total number of 434 judicial positions in Moldova in 2022, 55 unfilled judicial vacancies and 39 judges awaiting confirmation after their initial (probationary) term has run out under previous legislation until the end of 2022 constituted an important number of judges. This situation has put a strain on the judiciary in many ways, including a growing backlog of cases and other legal uncertainties regarding the status of judges who have not been confirmed in their positions but continued to receive judicial salary without participating in court proceedings.

### *Assessment of compliance*

## Benchmark 6.1.1.

Irremovability of judges is guaranteed:

| Element | Compliance |
|---|---|
| A. Judges are appointed until the legal retirement age (100%) OR | 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%) | |

A – compliant (100% of the score). In Moldova, judges are appointed until the legal retirement age of 65. Initial (probationary) appointment of judges has been abolished by the Law on the amendment of the Constitution of the Republic of Moldova which was adopted on 23 September 2021 and entered into force on 1 April 2022. In 2022, there was no practice of application of life-time appointment without initial five-year term as provided for by constitutional amendments due to the situation with the mandate and composition of the Superior Council of Magistracy and two of its subsidiary bodies, as described above.

B – not applicable.

## 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.*

In Moldova, Superior Council of Magistracy (SCM) qualifies as a judicial governance body under this indicator and other indicators regarding Judicial Council. It is set up by the Constitution of Moldova. The Law on the Superior Council of Magistracy and the Law on the Organisation of the Judiciary define its powers and include main provisions on its operation. It is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court, and court administration, and manages its own budget.

In 2022, seven judges have been appointed for initial five-year term before Constitutional amendment entered into force introducing life-time appointment and no judges have been appointed for life under the amended procedure. According to final provisions of the Law on amendments to the Constitution of Moldova, the Superior Council of Magistracy was to apply old procedure to judges appointed for an initial term which had expired by 1 April 2022 – i.e., they were to be proposed for "confirmation". As of 30 March 2022, 39 judges had their five-year term in office expire; they received salary but did not have the right to review cases. Initially, these judges could not be proposed for confirmation because their evaluation could not be conducted by the College for Performance of Evaluation of Judges, as the College did not function in 2022, but evaluation was an obligatory part of such procedure. On 10 March 2022, Parliament amended the Law on Selection, performance evaluation and career of judges, repealing obligatory requirement for such evaluation. The Parliament also adopted a Law on Certain measures relating to the selection of candidates for membership of self-administration bodies of judges and prosecutors which extended the term of their members until the office is occupied by their successors. Further on 7 April 2022, the Constitutional Court ruled to strip the members with extended mandate of the right to issue decisions regarding the appointment, transfer, secondment, promotion, and application of disciplinary measures to judges, as well as regarding the appointment of Constitutional Court judges. At the same time, the Constitutional Court did not exclude the competence of the SCM to submit to the President of the country proposals for the confirmation in office of judges. Subsequently, in October and November of 2022, 15 judges have been appointed under this procedure of proposals for reconfirmation. Even though, the new procedure entered into force in April 2022, the SCM could not apply it in practice due to reduced mandate of its extended members and no selection of new members that year due to the factors described earlier. Evaluation below covers both procedures – the adopted in 2022 procedure and that which was applied in practice in the process of confirmation of judges.

B – non-compliant (70%). Under amended legislation, the Superior Council of Magistracy prepares a proposal on the appointment of the judge that is submitted to the President who may reject it once within 30 days of receipt of the proposal on grounds provided in the legislation and explained in the decision on refusal (in some cases this period can be extended by another 15 days). The Law on Status of Judges (Art. 11) lists three grounds for rejection, including undeniable evidence of incompatibility of the candidate with respective office (this is further explained in Art. 8); violation of the law by the candidate; and violation of the legal procedures for candidate's selection. Such procedure, if and once applied in practice, would make Moldova compliant with element B. However, it has not been applied in practice in 2022.

The procedure applied in 2022 was that of "confirmation" of judges. This procedure did not comply with requirements of the element B, under which the judicial council prepares proposals and submits them to the President who can reject these only in exceptional cases and on clear grounds provided in the legislation and explained in the decision. In total, out of 39 proposed judges for confirmation, 15 judges have been appointed through this procedure in October and November 2022. The President rejected the other proposals, making rejection a non-exceptional case. The decisions of the President to reject proposals have been published. The general reasoning has been provided for 13 cases, citing non-compliance with requirements of impeccable reputation and suggesting integrity concerns but without any factual references. Other factors have been cited for delays in Presidential review of the SCM proposals, including the absence of the information for grounded decisions by the SCM, such as evaluation of judges which was repealed for this procedure. These may be valid concerns and the situation in Moldova has been exceptional; however, such steps further undermine the clarity of procedure and grounds for appointment. In sum, the applied procedures have raised criticism for lack of transparency but also would not allow Moldova to comply with requirements that the procedures for appointment have been transparent and clearly set in the legislation and in practice.

A-C – not applicable.

## 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%) | |

A – compliant (100% of the score). In Moldova, since August 2022 (with enactment of amendments to the Law on Status of Judges), judges are dismissed by the decision of the Supreme Council of Magistracy without involvement of the President or Parliament. No decisions on judicial have been taken in 2022 in Moldova. The authorities reported that there were 2 dismissals, but in both cases, the Disciplinary Board issued the decision to dismiss the judges in May and November of 2021.

B-C – not applicable.

## 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 |

A – compliant In Moldova, candidates for judicial positions are first included into the pool of candidates (the Register). The candidates are automatically added to the Register if they graduated from the National Institute of Justice or applied and submitted all the required documents to the Secretariat of the Superior Council of Magistracy, and met the criteria defined in the law. The eligibility requirements are stipulated in the Law on Status of Judges and the Law on Selection, Performance Evaluation and Career of Judges. The procedure for applying, the list of documents with templates are regulated by the SCM Regulations on the organisation and conduct of the competition for filling the positions of the judge, vice-president and president of the court. The Register is kept by the Secretariat of the SCM; it is periodically updated and is available online on the website of the Council and any person interested in the career of the judge can apply at any time and will be added once all the documents have been submitted in line with eligibility criteria stipulated in the Law. Therefore, applying for the register is not a step in the competition for the vacancies but rather a prerequisite that all interested persons which are eligible need to comply with. There is no evaluation element at this stage, it is a formal check and the right to submit the set of documents for inclusion in the Register is not conditional on any action by the Superior Council of Magistracy (e.g., prior notifications, notices, etc.). The actual competition begins with the announcement of the vacancies for judges, which are announced for each category separately. When the vacancies for judicial positions appear, they are advertised through publication in the Official Gazette of the Republic Moldova and on the website of the SCM. As a rule, vacancies are announced for the next 6 months twice per year. The vacancies must contain a deadline for submission of applications, which is set by the SCM and cannot be less than 20 days. The candidates from the Register must inform the Secretariat of SCM in writing if they wish to apply for the vacancy announced. It appears that the vacancies are publicly available and not limited to any group of persons.

As explained above, only 7 new judges have been appointed in 2022 before the Constitutional amendments took place. Vacancies for these positions have been announced. For the remainder of the year, there has been no announcements for judicial vacancies, as the selection process of judges was suspended due to limited competences of the SCM between 7 April 2022 until 30 April 2023.

B – not compliant. In Moldova, the judicial vacancies are filled according to an average score calculated through different assessments. The following comprises the candidate's average score: 1) graduation exam results after the initial training at the National Institute of Justice (up to 50 points); the candidate takes an equivalent exam if he or she is not a graduate of NIJ; 2) points awarded by the College for Selection and Career of Judges (up to 30 points), and 3) points received through assessment by the Supreme Council of Magistracy (up to 20 points). Persons with the highest scores are selected and have the first choice for vacancies. Score awarded by the National Institute of Justice is based on the examination of academic aptitude and obtained knowledge and is calculated based on the formula provided for in the SCM Regulation on the criteria for selection, promotion, and transfer of judges. Score awarded by the College for Selection and Career of Judges is based on the criteria measuring the level of knowledge and professional skills; the ability to apply knowledge in practice; seniority as a judge or in other legal profession; the qualitative and quantitative indicators of the activity carried out in the function of judge

or, as the case may be, in other specialized legal positions; compliance with ethical standards; didactic and scientific activity. The criteria are defined in detail in the said SCM Regulation with the indicators for evaluating these criteria provided in the Annexes. Integrity checks are conducted by the specialised bodies, including NIA and NAC upon the request of SCM.

Unlike with other assessments, there is no detailed regulation on how the Supreme Council of Magistracy awards scores. The rules are generic and provide, for example, that the Council evaluates motivation of the candidates and their reputation, interviews candidates, and that each member of the Council makes an individual judgement. In 2022, the legislation was no amended and did not include specific criteria and details of assessment ensuring a merit-based selection. In June 2023, the law on Selection and Evaluation of Judges has been adopted, which requires that SCM adopts new rules and improves criteria for selection and evaluation of judges. The authorities shared that such rules have already been adopted and are being applied by the Supreme Council of Magistracy. The monitoring team welcomes this development and looks forward to following up on this issue in the future monitoring.

Another issue regarding judicial appointments is polygraph testing of judicial candidates. It falls outside of the scope of the monitoring, but the monitoring team believes it merits attention. In Moldova, Law on Status of Judges requires that candidates for a judicial office must be polygraph tested. At the on-site, judges shared that they found this requirement problematic, as the test questions were ambiguous and subjective. On the other hand, Moldovan authorities have noted that although the polygraph test is provided by law, since the adoption of the law, no judge followed this procedure. No cooperation agreement was signed by the SCM to apply the polygraph tests, making them non-applicable in practice and removing the actual risks. Nevertheless, a similar requirement for prosecutors has been abolished. The monitoring team agrees that such testing, if ever applied in practice, might be subjective, excessive and cannot properly reflect the judicial integrity. It is not a reliable tool to evaluate judicial candidates. In addition, the monitoring team believes that since the polygraph testing is performed by the executive branch (the police and the intelligence office), as well as by the NAC, it can undermine independence of the judiciary.

## 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 |

A – compliant. In Moldova, judges are promoted through a competition organised by the SCM for the positions of judges in the hierarchically superior court The competition is launched through the announcement of respective vacancies similar to the appointment of judges. The SCM announces the vacancies on its website, as a rule every 6 months or when the vacancies appear, if there is an urgent need to fill the vacancy, and sets the deadline for applying, which cannot be less than 20 days. The eligibility criteria are identified in the Law on Selection, Performance Evaluation and Career of Judges, and any eligible candidate has opportunity to apply. Candidates for promotion, similarly to those who apply for judicial appointment for the first time, are included in the Register, and at the announcement of the competition may submit their application with all necessary files to the SCM's Secretariat or submit a written refusal to take part in the particular competition.

B – not complaint. Evaluation of candidates for higher judicial positions follows similar logic to that for the first-time appointments. The average score is composed of scores received as a result of performance

evaluation of the candidate for higher position (up to 50 points) conducted by the College for Evaluation of Judges regularly (once every three years) or in the run up to the competition for promotion (if the regular evaluation is more than 2 years old); scores awarded by the College for Selection and Career of Judges (up to 30 points), and by Supreme Council of Magistracy (up to 20 points). Scores awarded by the College for Evaluation of Judges are based on criteria evaluating judges in terms of efficiency, quality of work, integrity, and continuous professional training – with each of these criterion further broken down into indicators (for example, "efficiency criterion" is composed of 5 indicators, such as case resolution rate, compliance with reasonable deadlines in the process of administration of justice, compliance with deadlines for drafting of decisions, etc). Scores awarded by the College for Selection and Career of Judges are based on the criteria described under benchmark 1.4. The assessment conducted by the SCM has the same deficiencies as described under benchmark 1.4.

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

### *Assessment of compliance*

## Benchmark 6.2.1.

Court presidents are elected or appointed:

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

A – compliant. In Moldova, court presidents are appointed by the Superior Council of Magistracy.

B – compliant. According to the SCM Regulation on the Criteria, Indicators and Evaluation Procedure of Judicial Performance, candidates for the office of president or vice-president of the court must be assessed on the quality, efficiency and integrity in the position of judge; the skills of the judge for occupying the requested position; judge's didactic and scientific activity; experience in administrative functions; participation in activities related to court administration; and the candidate's elaboration of a plan or development strategy for the court for the next four years. All of these are further described in the Regulation with Annexes offering indicators, sources for verification and scoring weights.

C – compliant. In Moldova, court presidents are appointed through a competition organised by the SCM that announces vacancies for such judicial positions according to the procedure described above for the selection of judges.

## 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 | ✓ |

A – compliant. In 2022, budgetary funding allocated to the judiciary constituted 108.7% from the requested budget.

B – compliant. According to information provided by Moldova authorities, judicial representatives do not participate in the consideration of the judiciary budget in the parliament or the parliamentary committee responsible for the budget. However, amendments to the Article 121 of the Constitution that entered into force on 1 April 2022, state that "In the process of drafting, approving and amending the budget of the courts of law, the advisory opinion of the Superior Council of Magistrates is requested. The Superior Council of Magistrates is entitled to submit proposals to the Parliament on the draft budget of the courts of law." During the on-site visit, members of the SCM shared that they did not provide advisory an opinion but provided their proposals when the budget was developed, and their proposals have been taken into account.

## Benchmark 6.2.3.

The level of judicial remuneration:

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

A – compliant. Judicial remuneration is fixed in the Law on the unitary salary system in the budgetary sector, according to Moldovan authorities. However, the judges explained that this Law de facto froze the salaries of the judges and prosecutors and they have not been updated since 2018 despite the inflation. On one hand, it was noted by the authorities that such freeze was applied to all public servants with exception of the priority groups (such as teachers, doctors, court clerks, etc) and that judges benefit from special reference value established in the Law on state budged, which may be revised annually. It was also noted that in December 2022, the Constitutional Court decided that judicial salaries have to be indexed annually based on the inflation rate, nevertheless, the representatives of the judiciary met at the onsite visit expressed concerns with the remuneration levels for their profession.

B – compliant. There are no discretionary payments for judges under Moldovan legislation.

While Moldova is compliant under both elements of this benchmark, the issue of judicial remuneration is of concern. The monitoring team extensively discussed this issue with judges and found the concerns they raised reasonable. First, the salaries for judges were capped in 2018 as the reference value has been capped and the salaries have not changed since then. Unlike other civil service professions, judges do not

benefit from bonuses for performance and cannot be compensated for overtime – which has been used to increase salaries for other civil servants. The judges also do not benefit from other additional payments unlike some others, including in the legal profession, such as compensation for travel expenditures, housing, etc. According to the information provided by Moldovan authorities, in 2022 – a judge in the beginning of the career had a gross monthly salary of approximate equivalent of 1050 EUR. Under the previous law no longer in force, the salary would have been substantially higher. Second, there is a small difference in salaries between the various levels of seniority of judges and between the judges holding managerial positions vs. those who do not. For example, according to the data provided by authorities, salary level of the judge with more than 12 years of experience as a judge was approximately only 100 euros higher than that of the first-time judge (the salary amounting to approximate equivalent of 1150 EUR). Despite some of the positive incentives for participation on administration board of the National Institute of Justice or of the SCM boards, which provide for allowances equal to the number of attended sittings of the board, the difference between the salary of the President of the Court and that of the new judge is approximately 350 euros (the salary amounting to approximate equivalent of 1350 EUR). Finally, according to Moldovan authorities, in some cases judges may receive a lower salary that the prosecutor of the same level; this is also the case for court clerks if compared to the similar staff at the prosecution office. The monitoring team believes that the legislative changes of the regulation of the judicial remuneration had a negative effect on the profession by considerably lowering the level of actual salaries, exposing judges to higher corruption risks, making profession less attractive for young law graduates, and decreasing motivation for upward movement within the profession. Moldova needs to find appropriate avenues to address this issue.

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

### *Background*

In Moldova, the Superior Council of Magistracy is set up by the Constitution of Moldova. The Law on the Superior Council of Magistracy and the Law on the Organisation of the Judiciary define its powers and include main provisions on its operation. It is institutionally independent from the executive and legislative branch of government, Chairperson of the Supreme Court and court administration, and manages its own budget. Three of its subsidiary bodies also qualify as judicial governance bodies according to the definition used for this monitoring and will be evaluated under this indicator. These bodies are the College for the Selection and Career of Judges, the College for the Evaluation of the Performance of Judges, and the Disciplinary Board of Judges. According to the monitoring methodology, if a country has more than one judicial council or a similar body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.

As mentioned earlier, in 2022, the Superior Council of Magistracy had only four out of 12 members, while others could not be selected for reasons beyond the scope of fixing by the judiciary. Until April 2022, the SCM functioned in its reduced composition, when the decision of the Constitutional Court limited its extended-mandate members competences, eliminating their powers to make decisions related to judge's career, including appointment, transfer, promotion or disciplinary sanctions. However, the powers of SCM members to propose judges for confirmation have been kept and exercised in practice in 2022. The SCM also exercised other duties related to the court administration and other legal competences provided by the law (e.g. on budget issues, training of judges, etc.). The two of the three subsidiary bodies of the SCM (the College for the Selection and Career of Judges and the College for the Performance Evaluation of Judges) did not function in 2022; only the Disciplinary Board of Judges functioned in 2022.

***Assessment of compliance***

## Benchmark 6.3.1.

| | Compliance | | | |
|---|---|---|---|---|
| | **Superior Council of Magistracy** | **College for Selection and Career of Judges** | **College for Evaluation of Performance of Judges** | **Disciplinary Board 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 | ✓ | X | X | ✓ |

Non-compliant.

Superior Council of Magistracy: Section 2 of the Chapter IX of the Constitution is solely devoted to the Superior Council of Magistracy covering the Council's role, composition, and powers. The Law on Superior Council of Magistracy provides for procedures and functioning of the Council. In 2022, Superior Council of Magistracy functioned and adopted various decisions, although with limited competencies of the members whose mandates have been extended, as described above.

The College for the Selection and Career of Judges: Law on Selection, Performance Evaluation and Career of Judges, Title I, Chapter 2 sets up this body and defines its powers. In 2022, the College for the Selection and Career of Judges did not function.

The College for the Evaluation of the Performance of Judges: Law on Selection, Performance Evaluation and Career of Judges, Title II, Chapter 2 sets up this body and defines its powers. In 2022, the College for the Evaluation of the Performance of Judges did not function.

The Disciplinary Board of Judges: Law on Disciplinary Responsibility of Judges, Chapter II regulates the set up and powers of the Disciplinary Board of Judges. The Disciplinary Board of Judges was functioning based on this law in 2022.

The benchmark requires that all the judicial self-governance body/ies function based on the law, and in 2022 only two of the four relevant bodies functioned in Moldova, including the Superior Council of Magistracy and the Disciplinary Board of Judges, Moldova is not compliant with this 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 | | | |
|---|---|---|---|---|
| | Superior Council of Magistracy | College for Selection and Career of Judges | College for Evaluation of Performance of Judges | Disciplinary Board of Judges |
| A. Are elected by their peers | ✓ | ✓ | ✓ | ✓ |
| B. Represent all levels of the judicial system | ✓ | X | X | X |

A – compliant. In Moldova, Superior Council of Magistracy is composed of 12 members, six of these members are elected by their peers – by a secret ballot by the General Assembly of Judges. The College for the Selection and Career of Judges and the College for the Evaluation of the Performance of Judges are both composed of five members of which three are judges elected by their peers by a secret ballot by the General Assembly of Judges. The Disciplinary Board of Judges is composed of seven members of which four are judges elected by their peers by a secret ballot by the General Assembly of Judges.

B – non-compliant. In Moldova, only SCM members who are judges represent all levels of the judicial system. Four of them are elected from the courts of first instance, one from the courts of appeal and one – from the Supreme Court. There is no requirement on representation of all levels of the judicial system among judicial members of the other three bodies.

## Benchmark 6.3.3.

| | Compliance | | | |
|---|---|---|---|---|
| | Superior Council of Magistracy | College for Selection and Career of Judges | College for Evaluation of Performance of Judges | Disciplinary Board 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) | ✓ | ✓ | ✓ | ✓ |

Compliant. According to the Constitution, Article 122, six out of 12 members of the Superior Council of Magistracy are persons “who do not work within the bodies of legislative, executive or judicial power, and are not politically affiliated.” On its face it appears that Moldova meets the requirements of the benchmark as these members do not represent the government or the state. As regards the other bodies, two of them

– the College for the Selection and Career of Judges and the College for the Evaluation of the Performance of Judges – include two out of five members who are representatives of the civil society selected by the SCM. Three out of seven members of the Disciplinary Board of Judges are selected by the SCM from representatives of the civil society.

## Benchmark 6.3.4.

Decisions of the Judicial Council and other judicial governance bodies:

| Element | Compliance | | | |
|---|---|---|---|---|
| | Superior Council of Magistracy | College for Selection and Career of Judges | College for Evaluation of Performance of Judges | Disciplinary Board of Judges |
| A. Are published online | ✓ | N/A | N/A | ✓ |
| B. Include an explanation of the reasons for taking a specific decision | ✓ | N/A | N/A | ✓ |

A-B – compliant. In 2022 in Moldova, according to the authorities all decisions of the Superior Council of Magistracy have been published online on its official website. The decisions of its specialised body (the Disciplinary Board) that functioned in 2022 have been published as well. The College for the Selection and Career of Judges and the College for the Evaluation of the Performance of Judges did not issue any decisions in 2022. Examples of the published decisions reviewed by the monitoring team included explanation of the reasons for taking a specific decision.

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

### *Assessment of compliance*

## Benchmark 6.4.1.

The law stipulates:

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

A – not compliant. Grounds for the disciplinary liability of judges are regulated by the Law on Disciplinary Liability of Judges, Art. 4. Most grounds appear to be clear. However, the monitoring team considers several grounds to be ambiguous and allowing unlimited discretion of the decision-making body, including

"the actions of the judge in the process of administration of justice which demonstrate serious and obvious professional incompetence." This ground was abrogated by amendments which entered into force in April 2023 – however, in 2022 this ground was still valid. Similarly, Art. 4 (p) states that "other acts that harm professional honour or probity or the prestige of justice to such an extent as to undermine confidence in justice, committed in the performance of duties or outside them, which, according to their seriousness, cannot be qualified only as violations of the Code of ethics and professional conduct of judges" constitute a disciplinary violation. This ground has not been abrogated.

B – compliant. The Law on Disciplinary Liability, Chapter 3, regulates the main steps of the disciplinary liability procedure for judges. It defines who can initiate the proceeding and how, how the reports are registered and who investigates the allegations, the rights and obligations of the judge in question, the process of review of the results of the investigation and decision-making, appeal procedures to the Disciplinary Board and to the SCM. Technical details of the procedures are further elaborated in the SCM Regulations.

## Benchmark 6.4.2.

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

Compliant. In Moldova, the disciplinary investigation of allegations against judges is carried out by the inspector-judges of the Judicial Inspection. Once a disciplinary investigation has been completed, the inspector-judge submits the disciplinary case file report to the Disciplinary Board. A disciplinary file is then randomly assigned to a rapporteur from among members of the Disciplinary Board. The Disciplinary Board decides on the case. These are two separate structures and different staff are dealing with the investigation of allegations and decision-making in disciplinary cases.

## Benchmark 6.4.3.

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

Compliant. In Moldova, the judge has the right to be heard and produce evidence – during the investigation of the complaint by the Judicial Inspection, which starts the disciplinary investigation and collects the data, and during the review of the case by the Disciplinary Board. The judge has the right to be represented by another judge or be assisted or represented by a lawyer. The judge may appeal the decision of the Disciplinary Board to the Superior Council of Magistracy and then further these decisions can be appealed in the Appellate Court (first instance court) and then the Supreme Court of Justice. Based on the amendments from February 2023, which entered into force in April 2023, the SCM decisions are to be appealed to the Supreme Court of Justice directly to reduce the level of appeals in disciplinary matters Moldovan authorities maintain that these safeguards are enforceable in practice.

## Benchmark 6.4.4.

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

Compliant. In Moldova, Criminal Code's Article 307 punishes with a fine or imprisonment, as well as deprivation of the right to hold certain positions or exercise certain activities the delivery by a judge of a judgment, sentence, decision, or ruling contrary to the law. However, in 2022, the Superior Council of Magistracy did not give consent to the prosecution of judges under Article 307 of the CC and no sanctions under this article were applied in practice. Therefore, Moldova meets the requirements of this benchmark.

### Box 6.1. Good practice - Professional training for the Presidents and Vice Presidents of Courts

In Moldova, the candidates for the positions of the Presidents and Vice Presidents of courts have flagged the need for targeted training on issues related to court management. The Superior Council of Magistracy has addressed this need and requested that the National Institute of Justice (NIJ) prepares such training course and makes it available for more to the interested candidates. It has also requested that targeted training is provided to the Court Presidents and Vice Presidents which currently occupy these positions, considering their specific roles and duties. The NIJ adapts annually the curricula for these trainings based on judge' needs. In 2023, the Superior Council of Magistracy is to approve improved rules on minimum quality standards on organizational and administrative activity of district courts and courts of appeal.

NIJ National Institute of Justice has developed such courses and in 2022, 270 interested persons took part in such training, which don't hold the position of the Court Presidents and Vice Presidents. This illustrates the high interest to these issues and providing interested candidates and current position holders to build up the necessary skills.

This is a good practice which could be further replicated throughout the region. It recognizes the need for specific management skills, which are outside of the regular judicial portfolio and provides for opportunities to equip the judges with the necessary management skills if they seek or already hold management positions.

## Assessment of non-governmental stakeholders

Non-governmental stakeholders shared that they closely follow the work of the Pre-Vetting Commission and have been awaiting General Assembly of Judges meeting to select new SCM members. They opined that judiciary was in a difficult position, with many judges resisting the change and many being negatively affected through extremely high workload and low pay.

# 7 Independence of public prosecution service

In Moldova, the Prosecutor General is selected and proposed for appointment by the Superior Council of Prosecutors. Clear grounds for the dismissal were stipulated in the law, however, the main steps of the procedure were not regulated. There was no appointment or dismissal of Prosecutor General in 2022. The Superior Council of Prosecutors was the main body of the prosecutorial self-governance in Moldova. However, it was not composed of majority of prosecutors elected by their peers, and civil society representatives did not constitute more than one third of its composition. This was also the case with three sub-bodies of the Council. Vacancies for prosecutorial positions and promotions have been published online in 2022. Prosecutors were selected through competitions and based on merit. Grounds and procedure for disciplinary liability of prosecutors were stipulated in law, however some were too broad allowing an unlimited discretion of the decision-making body. Investigation into allegations of disciplinary violations was separated from the decision-making in such cases. Budget and remuneration of prosecutors complied with the benchmarks; however, salaries of prosecutors have not changed since 2018 and cannot provide sufficient insulation from corruption risks.

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

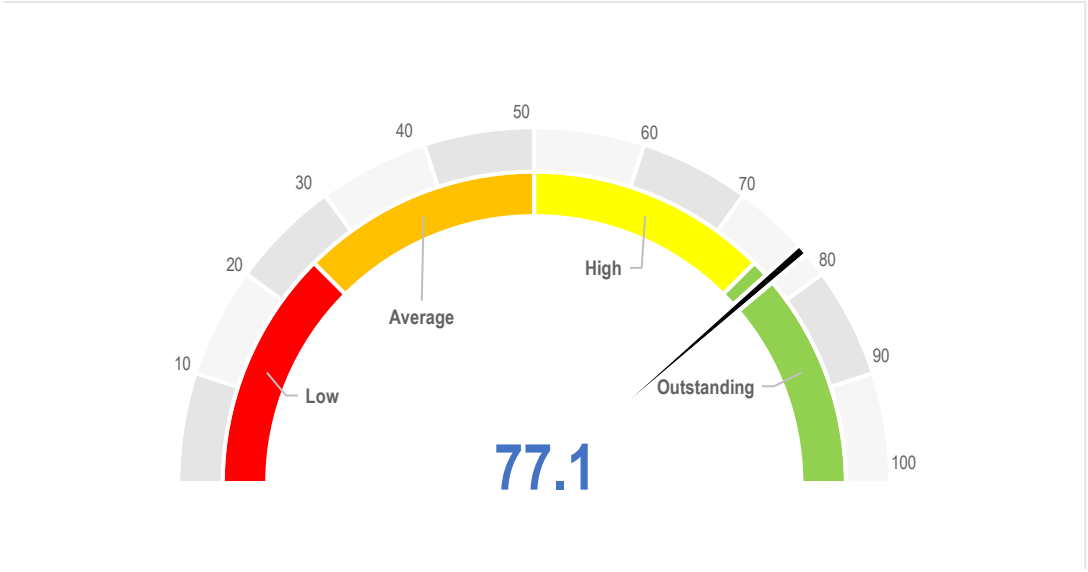
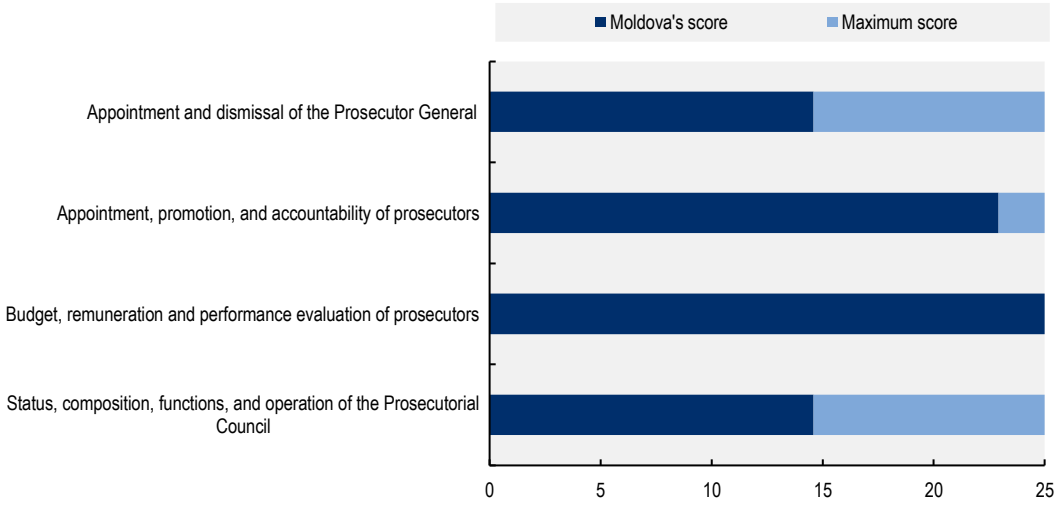



Figure 7.2. Performance level for Independence of Public Prosecution Service by indicators.



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

### *Background*

In Moldova, the Prosecutor General was suspended from his position in October 2021 with initiation of the criminal investigation against him. Immediately an Interim Prosecutor General was selected among the acting prosecutors by the Superior Council of Prosecutors. On 11 November 2022, a new Interim Prosecutor General was selected by the Council and appointed on 12 November 2022 by the President to serve until the end of suspension of the Prosecutor General.

### *Assessment of compliance*

#### Benchmark 7.1.1.

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

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

In Moldova, Superior Council of Prosecutors (SCP), a prosecutorial governance body, announces and organises the competition for the position of the Prosecutor General (PG). SCP shortlists the candidates based on their eligibility under set criteria and interviews them. As a result, each member of the SCP gives a score to the candidate, based on these scores the average score is calculated. The candidate with the highest score is then proposed by the Council to the President for appointment to the position of the PG. The President can reject the candidacy only once. For the repeat proposal of the same candidate, the Council should confirm the candidate by a vote of at least 2/3 of its members. The President then must appoint the candidate to the position of the PG. The Council should review professional qualities and integrity of candidates and decide on the final selection of the candidate proposed for appointment. This appears to meet the general requirements set in this benchmark.

A – compliant. For element A, it is sufficient to have all required components of the procedure set in the legislation. In Moldova, the procedure described above, and the role of the SCP is stipulated in the Law on Prosecution Service (Art. 17 and 20). The Law on the Verification of Holders and Candidates for Public Positions regulates procedure for integrity checks of the candidates.

B – not applicable. In 2022, there was no Prosecutor General's appointment process in Moldova.

The quality of the evaluation of the professional qualities and integrity carried out by a prosecutorial governance body does not fall into the scope of the benchmark and is not assessed for compliance with this benchmark. The practical application of the above procedure did not occur in 2022. However, the monitoring team notes that, although the eligibility requirements are stipulated in the Law on Prosecution Service, the specific criteria are to be approved by the SCP's regulation. There was no such regulation in force in 2022. The previous regulation on how to organise, conduct and evaluate the results of the selection of the candidate for the position of the Prosecutor General, which stipulated such criteria, was revoked, and no other regulation was adopted to replace it. During the onsite visit, members of the SCP shared that

during the appointment of the Interim Prosecutor General they used old criteria from the revoked Regulation which was no longer in force. The monitoring team urges Moldova to adopt new detailed requirements for the future selection process.

## 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 | ✓ |
| C. The law regulates the main steps of the procedure | X |
| D. The law requires information about the outcomes of different steps (if there are several steps) of the procedure to be published online | N/A |

A – compliant. In Moldova, the grounds for pre-term dismissal of the Prosecutor General are defined in the Law on Prosecution Service. Art. 57 and 58 provide an exhaustive list of grounds for pre-term dismissal of the PG, and Art. 31-1 regulates performance evaluation of PG and may result in the initiation of dismissal.

B – compliant. Grounds for dismissal in most cases expressly state actions or inaction that can result in dismissal. However, in the monitoring team’s opinion, one ground could be further clarified. Art. 57 (i) stipulates that the PG can be dismissed “if it is established, after his or her appointment, that there is at least one reason why the person cannot be appointed as a prosecutor.” Moldovan authorities explained that the text refers to the conditions stated by law, that must be met to become a prosecutor, like those listed in Art. 20 Law on Prosecution Service. These conditions must exist not only upon appointment, but throughout the tenure of office. If at least one of the conditions is missing, then the termination of the service is ordered. Although the monitoring team did not consider it a major problem, it recommends to reformulate this ground of dismissal, and make a clear reference to Art. 20 of Law on Prosecution Service.

One ground is further broken down into more specific grounds, as required by this element of the benchmark. According to the Law on Prosecution Service, Art. 58 para. 7, “The General Prosecutor may be dismissed from the position before the expiration of the mandate, by the President of the Republic, upon the proposal of the Superior Council of Prosecutors, if, in the framework of the evaluation of the performances carried out according to the provisions of Art. 31/1, he gets the qualification "unsatisfactory". What constitutes “unsatisfactory qualification” is detailed in the SCP Regulation on Performance Evaluation of the Prosecutor General adopted in 2021 and updated in January 2022. It provides that the activity of the General Prosecutor is appraised based on eight criteria which are further broken down into indicators with specific scores. With these further details, the monitoring team believes that the grounds for dismissal are not excessively broad or ambiguous to allow unlimited discretion of the SCP or the President.

C – non-compliant. The Law on Prosecution Service stipulates that the pre-term dismissal can be initiated by the proposal of the Superior Council of Prosecutors to the President of Moldova who then issues the relevant decree (1) in cases with circumstances independent of the will of the parties (Article 57); (2) in cases of Prosecutor General getting the qualification “unsatisfactory” in the framework of the evaluation of the performance (Article 58 (7)), or (3) in cases when Superior Council of Prosecutors applied disciplinary sanction of dismissal from office. However, there is no procedure set in law regarding how the Council decides to initiate the dismissal – in particular – as to how this process is organised: what is required in terms of vote or who makes the decision that such proposal should be submitted to the President, who

drafts the proposal and submits it to the President, how these steps are communicated to the Prosecutor General and the public, what the rights are and the role of the Prosecutor General in the initiated procedures for dismissal etc. SCP representatives stated that they did not adopt a regulation stipulating the procedure, because this possibility is not expressly provided to the Council by law and SCP cannot add to the law by its secondary legislation. The President can initiate the pre-term dismissal in other cases stipulated in Article 58. This procedure is also not further elaborated. During the on-site, SCP representatives acknowledged the above shortcomings and believed members of the Parliament should be made aware of the need for amendments.

D - not applicable. In 2022, the procedure did not envisage any steps, as described above, according to the monitoring methodology the element is therefore not applicable.

## 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 |

Not applicable. There were no cases of dismissal of the Prosecutor General in Moldova in 2022. This benchmark is therefore not applicable.

The monitoring team was alerted to the fact that although in 2022 there were no cases of dismissal of the Prosecutor General, in May 2023, the Superior Council of Prosecutors has submitted to the President of Moldova such proposal regarding the suspended Prosecutor General. This was done based on the Report of the Commission for the Evaluation of the Performances of the Prosecutor General, which assessed the performances of the Prosecutor General as “unsatisfactory”. The evaluation was initiated in November 2021 and was finalised by May 2022. In mid-September of 2023, the President’s decision was pending. The monitoring team has not analysed this process in the current report and will follow-up on it in the next monitoring, as it formally falls outside the timeframe of this monitoring.

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

### *Background*

In Moldova, the same procedures for appointment and promotion are applied to all prosecutors apart from the Chief and Deputy Chief of the Specialised Prosecution Offices, and the Chief Prosecutor of the Prosecution Office of the Autonomous Territorial Unit (ATU) of Gagauzia. However, leadership positions of the Specialised Prosecution Offices are equated to that of the Deputy Prosecutor General – and therefore do not fall into the scope of this benchmark and the selection of the Chief Prosecutor of the Specialised Anti-Corruption Office is reviewed under PA 8. Selection of Chief Prosecutor of the Prosecution Office of the ATU of Gagauzia is reviewed separately under relevant benchmark of Indicator 4.

Eligibility criteria are defined in the legislation both for candidates that wish to become prosecutors and those who are already prosecutors and wish to apply for another prosecutorial position, including higher position and the position of the Chief and Deputy Chief Prosecutor of the Prosecutor’s Office of the ATU of Gagauzia.

The legislation provides for maintaining of the database of persons interested in the career of the prosecutors – Register of Candidates for Filling Vacant Positions (Register). Law on the Prosecution

Service, Art. 22 provides for the list of documents that the candidate needs to submit to be entered into the Register. SCP Regulation on the Superior Council of Prosecutors stipulates further details of the procedure. In particular, that once an application with all required documents is submitted, the SCP notifies candidates of the initiation of the procedure to verify their submitted documents, including those required by the Law on the Verification of Holders and Candidates for Public Positions (integrity checks), and medical certificates. Once all required documents have been received and verified – all candidates who submitted the full package of documents and passed the necessary verifications are entered into the Register regardless of existence of vacancies at the time of registration. The Register is kept by the Secretariat of the Superior Council of Prosecutors and contains three lists: (i) the list of candidates to the vacant position of prosecutor (candidates for first time appointment as prosecutors), (ii) the list of prosecutors applying for transfer or promotion, and (iii) the list of prosecutors applying for appointments as Chief Prosecutor or Deputy Chief Prosecutor, including to the Prosecution office of the ATU of Gagauzia. The Register is made public on the website of the Council and any person interested in the career of the prosecutor can apply at any time and will be added once all the documents have been submitted in line with eligibility criteria stipulated in the Law. Therefore, applying for the register is not a step in the competition for the vacancies but rather a prerequisite that all interested persons which are eligible need to comply with. There is no evaluation element at this stage, it is a formal check and the right to submit the set of documents for inclusion in the Register is not conditional on any action by the Superior Council of Prosecutors (e.g. prior notifications, notices, etc.). The actual competition begins with the announcement of the vacancies for prosecutors, which are announced for each category separately.

### *Assessment of compliance*

## Benchmark 7.2.1.

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

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

A – compliant. The vacancies are made public on the website of the Superior Council of Prosecutors periodically, as a rule once every six months. During 2022, SCP announced four competitions for the position of the prosecutors: two competitions for graduates of the National Institute of Justice (14 vacancies), one for candidates with five years of legal experience (four vacancies), one for candidates with 10 years of experience as a prosecutor, judge, or lawyer (four vacancies).

B – compliant. The eligibility criteria are defined in the national legislation, as required by the benchmark and they are reasonable and non-restrictive. In 2022, in certain cases, the deadlines for applications were short - when positions were announced for graduates of the National Institute of Justice, the deadline was six days. Authorities explained that all eligible candidates have been notified by email and could participate. These competitions have been for graduates of the NIJ who are aware of the competition and were expecting the announcement and needed six days to decide whether to provide formal agreement to take part in the selection process as all of the documents have already been submitted and did not require preparation. While the monitoring team identified this formal exception to the standard, it did not believe it represented an obstacle for applicants to take part and did not create a discriminatory situation.

C – compliant. All candidates from the Register are assessed by the College for Prosecutors' Selection and Career, a sub-body of the Superior Council of Prosecutors, against the criteria identified in the Law on Prosecution Service and according to the Regulation approved by the Superior Council of Prosecutors. The criteria include experience, skills, and integrity – for example: "a) the level of professional knowledge and skills; b) the ability in practical application of knowledge; c) length of service as a prosecutor or other positions laid down in Article 20; d) quality and effectiveness in office of public prosecutor; e) compliance with the rules of professional ethics; f) scientific and educational activity."

The procedure and criteria are published on the website of the Council as required by the law. Legislation also stipulates how the scores are assigned and calculated. Candidates which refuse to undergo an assessment are removed from the Register. Legislation requires that results of the assessment are published within two days on the Website of the Council. Results of the assessment can be appealed. According to Moldovan authorities, in 2022, there were no cases when any of these procedures have not been followed (e.g., late publication of the results of assessment, appointment of prosecutors outside of procedure, etc.).

## 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 | ✓ |
| B. Any eligible candidate can apply | ✓ |
| C. Prosecutors are promoted according to merits (experience, skills, integrity) | ✓ |

A – compliant. The announcement of the competition for promotion is published on the website of the Superior Council of Prosecutors. According to Moldovan authorities, all promotion competition notices were published online in 2022. In particular, the Superior Council of Prosecutors made 10 announcements regarding competitions for promotion/transfer of prosecutors, of them – seven were for leadership positions (to fill 128 vacancies), three for promotion or transfer (to fill 27 vacancies), and two announcements – for a competition to appoint the Chief Prosecutors of the Anticorruption Prosecutor's Office and the Prosecutor's Office for Combating Organized Crime and Special Cases.

B – compliant. The eligibility requirements are stipulated in the law, along with the list and format of documents that the applicants must submit. They appear not to be limiting. The deadlines for applications were 20 days or more and appear to be reasonable. In the case of the competition for the position of Chief Prosecutor of the Anticorruption Prosecutor's Office, the deadline has been prolonged, as was needed (see more details under PA 8).

C – compliant. Under regular procedure, the candidates from the Register (the list of prosecutors applying for transfer or promotion) can apply for the promotion competitions. Candidates which refuse to apply for the vacant positions more than twice are removed from the Register. Candidates who applied are assessed by the College for Prosecutors' Selection and Career, a sub-body of the Superior Council of Prosecutors, against criteria identified in the Law on Prosecution Service and according to the Regulation approved by the Superior Council of Prosecutors. The criteria include experience, skills, and integrity. The procedure and criteria are published on the website of the Council as required by the law. Legislation also stipulates how the scores are assigned and calculated in the process. According to Moldovan authorities, during 2022, there were no cases when any of these procedures have not been followed in practice (e.g. late

announcement of the promotion competition notices, late publication of the results of assessment, appointment of prosecutors to higher positions outside of procedure, etc.).

One issue which Moldova may wish to address. Namely, a prosecutor, with his consent, can be delegated by the Prosecutor General for up to 2 years to a higher paid position without meeting the conditions laid out by the law for that position. While, this has not happened in practice, the delegation has an exceptional character, cannot exceed a total duration of 2 years, the salary difference in higher positions is not substantial, and the monitoring team doesn't believe this has effect on the compliance rating - potentially, this can create a situation in which a regular promotion procedure could be bypassed and could further lead to "de facto promotion" not on merit, creating risk of interference with the cases handled by these prosecutors. The monitoring team recommends Moldova to consider removing the possibility for such a "delegation" or transferring the powers of delegation to the SCP.

## 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 | ✓ |

A - compliant. In Moldova, the Law on Prosecution Service stipulates grounds for disciplinary liability. Its Chapter VII, Section 2 (Disciplinary liability) defines what constitutes disciplinary violations which result in disciplinary liability. Dismissal is one of the disciplinary sanctions under Art. 39 of the Law on Prosecution Service. Dismissal is also one of the two conditions for termination of service of prosecutor under Article 56 of the Law on Prosecution Service. List of grounds for dismissal is stipulated in Article 58 of the Law on Prosecution Service.

B – non-compliant. The list of grounds for dismissal appears to be exhaustive and unambiguous. However, several grounds for disciplinary liability appear to be excessively broad allowing for unlimited discretion of the decision-making body. One such ground is contained in Art. 38 (a) stipulating that "improper performance of official duties" results in disciplinary liability. What constitutes "improper performance of official duties" is not further broken down into more specific grounds in the legislation, as required by the benchmark. The prosecutors met during the on-site, agreed that this ground was too general and informed that the Superior Council of Prosecutors had the same concern and alerted the Ministry of Justice, which they believed was working on the draft legislation to address this shortcoming.

Another ground that is not line with the benchmark is contained in Art. 38 (f) - "undignified attitude, manifestations or way of life which are prejudicial to the honour, integrity, professional probity, prestige of the Prosecutor's Office or which violate the Code of Ethics of Prosecutors". The monitoring team finds this ground to be vague and open to interpretation. The authorities noted that this too is addressed in the draft legislation prepared by the Ministry of Justice. Finally, the monitoring team found the ground under Art. 38 (b) to be excessive as it states that "failure to apply or incorrect application of the law, unless justified by a change in the practice of applying the rules laid down in the legal system" shall constitute a disciplinary violation. The norm does not specify the scope of failure, or its gravity. In principle, the simplest disregard of a procedural provision may automatically trigger disciplinary proceedings.

C – compliant. The Law on Prosecution Service regulates the main steps of the disciplinary procedure and the timeframes. The disciplinary action can be initiated on the receipt of notification concerning facts which may constitute disciplinary offence. The law defines who can submit such notification, its form and content. The notification is submitted to the Secretariat of the Superior Council of Prosecutors which registers them and forwards to Inspection of Prosecutors first for preliminary verification and subsequent verification. After verification the Inspector issues a decision on termination of disciplinary proceedings or transmission of materials to the Board of Discipline and Ethics, or – in particular cases – to the Ministry of Justice. The Board of Discipline and Ethics examines and decides on the disciplinary case. The role and the rights of the prosecutor in questions are also stipulated in the law.

## Benchmark 7.2.4.

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

Compliant. In Moldova, disciplinary investigation of allegations against prosecutors are investigated by inspectors of the Inspection of Prosecutors who carry out the investigation, prepare the disciplinary case and present it to the disciplinary body but do not take part in the deliberations or sanctioning. The case is examined by another entity – the Board of Discipline and Ethics.

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

***Assessment of compliance***

## Benchmark 7.3.1.

The budgetary funding allocated to the prosecution service:

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

A – compliant. In 2022, General Prosecutor's Office (GPO) requested financial resources in the amount of 385,379,000 MDL and, by the end of 2022, it was allocated a total of 394 021 500 MDL, which constituted more than 100%.

B – compliant. Representatives of the prosecution service do not directly participate in the consideration of budget in parliament or the parliament's committee responsible for budget. Annually the GPO sends its calculations on the needs and costs of the prosecution service to the Ministry of Justice and then this is sent to the Ministry of Finance. The Ministry of Finance examines this request and comes back to the GPO

with questions and they debate the disagreements on the proposal. At the on-site visit, representatives of the prosecution service shared that it would be useful to provide the right to participate in the consideration of the budget in the parliament or the parliament committee responsible for budget. However, the prosecution service has never made such a request.

## 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 | ✓ |

A – compliant (100%). In Moldova, until 1 December 2018, the level of remuneration of prosecutors was stipulated in a stand-alone law - the Law on the Remuneration of Judges and Prosecutors. This law was repealed and currently the Law on the Unitary Pay System in the Budgetary Sector stipulates the level of remuneration for prosecutors and links it to the social standards adopted in the country (reference value established annually by Parliament in the annual budget law).

B – compliant. In Moldova, additional payments that existed for prosecutors did not qualify as discretionary payments. The same benefits additional to the basic remuneration, are provided to all prosecutors regularly at a fixed rate, apart from those prosecutors who have been disciplinary sanctioned. Moldova was compliant with this element of the benchmark.

While Moldova is compliant under both elements of this benchmark, the issue of prosecutorial remuneration is of concern. The monitoring team extensively discussed this issue with prosecutors and judges and found the concerns they raised reasonable. First, the salaries for prosecutors were capped in 2018 as the reference value has been capped and the salaries have not changed since then. Unlike other civil service professions, prosecutors do not benefit from bonuses for performance and cannot be compensated for overtime – which has been used to increase salaries for other civil servants. The prosecutors have also lost special state aid options. According to the information provided by Moldovan authorities, in 2022 – a first-time prosecutor had a gross monthly salary of approximate equivalent of 945 EUR. Under the previous law no longer in force, the salary would have been at the approximate equivalent of 1385 EUR – a substantial difference. Second, a percentage increase for exercise of management positions (from 7 to 20%) that existed under the previous legislation was replaced with setting a small difference in salaries between the various levels of seniority and management positions vs. non-management. For example, according to the data provided by authorities, salary level of the prosecutor of the GPO with more than 16 years of experience was approximately only 370 euros higher than that of the first-time prosecutor in the territorial office with less than 6 years of experience. The difference between the salary of the PG and of the regular prosecutor of the GPO is approximately 350 euros. The monitoring team believes that the legislative changes of the regulation of the prosecutorial remuneration had a negative effect on the profession by considerably lowering the level of actual salaries, exposing prosecutors to higher corruption risks, making profession less attractive for young law graduates, and decreasing motivation for upward movement within the profession. Moldova needs to review and address this issue.

## Benchmark 7.3.3.

Performance evaluation of prosecutors is carried out by:

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

B – compliant (100%). In Moldova, prosecutor's performance is evaluated in the form of the periodical assessment (every four years) and extraordinary assessment (at the request of the prosecutor in question, if he or she take part in the competition for the position of the Chief Prosecutor, and if he or she received qualification "insufficient"). Both types of assessment are carried out by the Prosecutors' Performance Evaluation Board subordinated to the Superior Council of Prosecutors. The Board analyses and assesses the files of the prosecutors subject to evaluation, organises and conducts interviews with prosecutors under evaluation (these two actions constitute the procedure of evaluation) and adopt decisions on the performance evaluation of the prosecutor undergoing evaluation.

The Prosecutor's Performance Evaluation Board is a sub-body of the Superior Council of Prosecutors, which under this monitoring qualifies as one of "prosecutorial governance bodies" in Moldova (please, see further details under Benchmark 4.1).

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

### *Background*

In Moldova, the Superior Council of Prosecutors qualifies as the prosecutorial governance body according to the definition of this monitoring. Three of its subsidiary bodies also qualify as prosecutorial governance bodies and will be evaluated under this indicator. Namely – the Board (College) for Selection and Career of Prosecutors, the Prosecutors' Performance Evaluation Board, and the Board (College) of Discipline and Ethics.

In 2023, significant changes took place in the prosecutorial governance bodies of Moldova, changing the composition of the Superior Council of Prosecutors and its subsidiary bodies. In addition, the mandates of the two mentioned-above boards, namely, the Board (College) for Selection and Career of Prosecutors and the Prosecutors' Performance Evaluation Board have been abrogated. A new Board (College) for Selection and Evaluation of Prosecutors is to carry out their functions once its members are selected by the Superior Council of Prosecutors and General Assembly of Prosecutors. Therefore, in 2023 there is now two Boards: the new Board for Selection and Evaluation of Prosecutors and the Board of Discipline and Ethics. Evaluation below takes note of these changes; however, it focuses on status quo as of end of 2022.

***Assessment of compliance***

## Benchmark 7.4.1.

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

According to the monitoring methodology, if a country has more than one prosecutorial governance body, the benchmark will be applied to all respective councils or bodies. In other words, each of such councils or bodies must comply with the benchmark for the country to be compliant.

Compliant. In Moldova, the Superior Council of Prosecutors qualifies as the prosecutorial governance body according to the definition of this monitoring. It is set up and functions based on the Constitution (Article 125/1 – Superior Council of Prosecutors), the Law on Prosecution Service (Title III Self-governing bodies under the purpose of the Prosecution Office), which define its powers, the organisation and functioning. It is independent of the legislative and executive branches of government. The Prosecutor General is an ex-officio member of the Council and can participate in the meetings of the SCP but without the right to vote in the adoption of the Council's decisions with exception of those concerning the drafting and adopting normative acts and policy documents on the development of the Prosecution Office. The Council functions in practice.

The subsidiary bodies of the Council (the Board (College) for Selection and Career of Prosecutors, Prosecutors' Performance Evaluation Board, and the Board (College) of Discipline and Ethics) also qualify as "prosecutorial governance bodies" under this monitoring. They are set up by the Law on Prosecution Service which defines their competences, organisation and functioning (Title III Self-governing bodies under the purpose of the Prosecution Office). These bodies are independent of the legislative and executive branches of power. The Prosecutor General or his/her deputies do not chair in the respective bodies, do not appoint or dismiss their members, do not approve their decisions or play a decisive role in their decision-making in another form, as well as have no authority to supervise or control their operation. These bodies function in practice.

## 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 |

A-B – non-compliant. In Moldova, the Superior Council of Prosecutors consists of 13 members: the President of the Superior Council of Magistracy ex officio (including interim); the Minister of Justice (including interim)' the People's Advocate; the Prosecutor General; five members elected by the General Assembly of Prosecutors from among the prosecutors in office, by secret, direct and free vote (one from among the prosecutors of the Office of the Prosecutor General, and four - from among the prosecutors of the territorial and specialised prosecutors' offices); and four members elected from civil society. Five

prosecutorial members of the SPC who are elected by their peers do not represent the majority; the Prosecutor General is not counted as he is not elected to the SCP by peers.

The other three bodies (the Board for Selection and Career of Prosecutors, the Prosecutors' Performance Evaluation Board, and the Board of Discipline and Ethics) each comprise seven members of whom five are elected by the General Assembly of Prosecutors from among the prosecutors and the other two members are elected by the SCP from among representatives of civil society.

The monitoring team regretfully notes that with legislative changes which took place in 2023, the number of members composing the two subsidiary bodies of the SPC, who are prosecutors elected by the General Assembly of Prosecutors from among the prosecutors has been reduced from five to two.

## 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 |

Non-compliant. Four from 13 members of the Superior Council of Prosecutors are representatives of civil society and two from seven members of in each of other prosecutorial governance bodies (the Board for Selection and Career of Prosecutors, the Prosecutors' Performance Evaluation Board, and the Board of Discipline and Ethics) are representatives of civil society. In all these cases, such a representation does not constitute at least 1/3 of members in any of these bodies.

As noted above, in 2023, the non-governmental stakeholder's composition of all these bodies has changed, providing them with higher representation. The monitoring team notes this positive development but will be able to evaluate it only in the next monitoring report.

## Benchmark 7.4.4.

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

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

A-B – compliant. The Law on Prosecution Service (Art. 77) requires that decisions of the Prosecutorial Council (SCP) are motivated, signed and published on the official website of the SCP within 10 days of their issuance. The same Law (Art. 85) requires that the decisions of the SCP's three sub-bodies are also motivated, signed and published on the official website of the Council. The decisions regarding evaluations of prosecutors are not published but results of the evaluation are made public.

In 2022, the SCP adopted 282 decisions, all of which were published and can be found here. The College for the Selection and Career of Prosecutors adopted and published 140 decisions, which can be found here; the College for the Evaluation of Prosecutors' Performance adopted and published 0 decisions; and the College of Discipline and Ethics adopted and published 158 decisions, which can be found here.

According to Moldovan authorities, these represent all decisions of SCP and of all three boards taken in 2022, except for approximately one percent of decisions on disciplinary matters. The authorities explained that due to the workload, the SCP had a backlog regarding the publication of decisions in disciplinary matters, as the personal data had to be taken out manually, which took time.

The examples provided by authorities included the explanation of the reasons for taking the decisions. The monitoring team believes that the facts were described in detail, with some data censored, such as: numbers, dates, names, addresses. The latest decision found on the official website of the SCP was from 16 December 2022.

## 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 | C (50%) |
| 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%) | |

C – compliant (50%). In Moldova, the Prosecutor General appoints prosecutors upon proposal from the Superior Council of Prosecutors. According to Regulations of the Superior Council of Prosecutors, the PG may reject the proposal within five working days if he/she finds the candidate is incompatible with the position of the prosecutor. In such a case, the PG must provide the SCP and the candidate in question with the copy of the act issued and the documents confirming circumstances of incompatibility. Having received such a rejection, the Council instructs the Inspectorate of Prosecutors to verify the circumstances, and, if it finds them unfounded, the Council may confirm its proposal by the vote of at least 2/3 of its members. In this case, the proposal becomes binding on the Prosecutor General.

The described procedure would make Moldova compliant with Element B of the Benchmark. However, procedure for appointment of the Chief of the Prosecution Office of ATU Gagauzia, regulated by Law on Prosecution Service (Art. 26), is different. Namely, the candidate for this position is selected by the People's Assembly of Gagauzia according to the regulations adopted by the SCP. The public competition is organised and carried out according with the procedure established by the local law of People's Assembly of Gagauzia. Then the People's Assembly of Gagauzia proposes the selected candidate for verification to the Superior Council of Prosecutors, which verifies that the candidate meets the eligibility criteria and that the selection procedure was observed and proposes the candidate for appointment to the Prosecutor General. Appointment procedure for this position therefore downgrades Moldova to compliance with element C of this 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 | ✓ |
| 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 | ✓ |

A – compliant. In Moldova, the Board (College) of Discipline and Ethics apply disciplinary measures directly. The Superior Council of Prosecutors reviews the appeals to the decisions of the Board (College) of Discipline and Ethics within one month and either upholds the contested decision of the Board or adopts a new decision resolving the case. This too is done directly. Moldova complies with element A of this benchmark.

B – compliant. In Moldova, Prosecutor General is an ex-officio member of the Superior Council of Prosecutors. However, he or she does not participate in decision making on the discipline of individual prosecutors. The Prosecutor General participates in meetings of the Council without the right to vote in adoption of its decisions, except those concerning drafting and adoption of normative act and policy documents. Moldova complies with element B.

# 8 Specialized anti-corruption institutions

Moldova ensures specialisation of anti-corruption investigators and prosecutors. Two key institutions – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office investigate corruption, with Anti-Corruption Prosecution Office focusing on high-level corruption; it also presents corruption cases in court. In 2022, the Chief Prosecutor of Anti-Corruption Prosecution Office was selected through a transparent and merit-based procedure. The competencies of the two agencies overlap, but Moldova is addressing this issue through the reform which took place outside of the monitoring timeframe in 2023. Moldova should ensure the focus on high-level corruption through this future reform. Identification, tracing, return and management of assets is performed by specialised officials of the Criminal Asset Recovery Agency, which has been active in 2022.

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

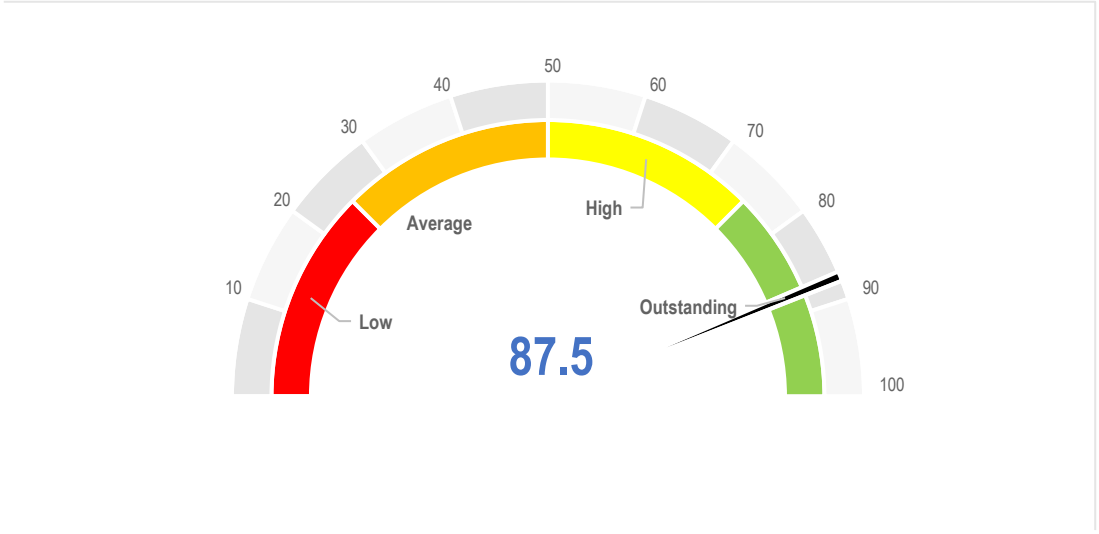
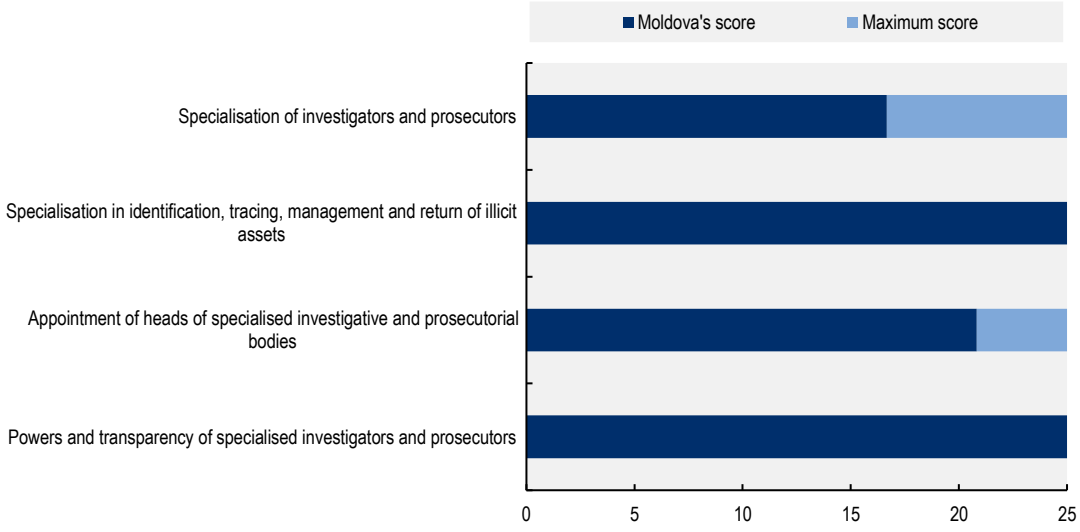



Figure 8.2. Performance level for Specialized Anti-Corruption Institutions by indicators.




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

### *Background*

Recent amendments to the Criminal Procedure Code, adopted on 14 April 2023, changed the jurisdiction of the law enforcement agencies over investigation and prosecution of corruption cases in Moldova. In line with the amendments, police authorities within the Ministry of Internal Affairs will investigate low-level corruption. National Anti-Corruption Centre (NAC) will investigate corruption offences committed by high-level officials, or those with the high value of the bribe or high inflicted damages. Anti-Corruption Prosecution Office (APO) will supervise NAC's investigations and will take them to trial. The law is to enter

into force on 4 August 2023. NAC and APO have three months from publication of the law to decide on cases that are no longer under their jurisdiction. Cases that, according to the latest amendments, are no longer under the jurisdiction of the APO and the NAC, must be closed, sent for investigation to other law enforcement agencies, or sent to court. This law seeks to further delineate competences between law enforcement bodies investigating corruption and provide for specialisation on high-level corruption in Moldova, allowing NAC and APO to focus on these crimes, as during the monitoring period both agencies have been overwhelmed by cases of petty corruption. It also aims to implement one of the conditionalities of the Action Plan for the implementation of the measures proposed by the European Commission in its Opinion on the application for accession of the Republic of Moldova to the EU, approved by the National Commission for European Integration on 4 August 2022, as well as the Memorandum on Economic and Financial Policies, concluded with the IMF. The new competencies will be reviewed in the next monitoring cycle, this report evaluates the status quo until 31 December 2022.

In Moldova, in 2022, two institutions had mandate and responsibility to investigate corruption offences – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office. According to Criminal Procedure Code Art. 269, NAC has the competence to carry out the criminal investigation regarding the crimes, which include active and passive bribery in public sector, trading in influence, abuse of office, illicit enrichment, passive and active bribery in the private sector, abuse of functions by a public official, misappropriation of funds, embezzlement, and money laundering, as well as those committed in connection with these crimes, with the exceptions provided by the Code. According to Criminal Procedure Code Art. 270-1, the Anticorruption Prosecutor's Office carries out investigations in most of the corruption offences, apart from illicit enrichment and money laundering, if they are perpetrated by high-level official or the bribe or damage are of high-level.

For the purposes of this monitoring, if the country has more than one body investigating corruption, including high-level corruption, the one with primary responsibility for such crimes will be reviewed. In Moldova, in 2022, before the competence of these bodies was changed in 2023, APO had responsibility for investigating most high-level corruption offences, with exception of illicit enrichment and money laundering that were investigated by NAC. APO is therefore evaluated under benchmarks 1.1-1.2 (as the specialised anti-corruption investigative body of Moldova) and 1.3 (as the specialised anti-corruption prosecution body of Moldova).

### *Assessment of compliance*

## Benchmark 8.1.1.

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

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

A - not applicable.

B - compliant (100% of the score).

According to Criminal Procedure Code Art. 270-1, the Anticorruption Prosecutor's Office carries out investigations for a set of 19 criminal offences, if some conditions are met. The list is not identical with the

list of 19 offences provided for NAC, but most of the corruption offences, apart from illicit enrichment and money laundering are in that list. The conditions refer to:

a) a position of the perpetrator (most of the persons, who are considered to be high-level officials under this monitoring are included in this list);

b) the value of the bribe or of the damage caused by the offence exceeds a certain financial threshold (when it is high).

APO appears to have clearly established mandate and responsibility to investigate high---level corruption offences, and those related to corruption, as the main focus of its activity. Exceptions to these rules are mentioned in the Criminal Procedure Code Art. 271, which provides for a possibility to assign investigation of other categories of crimes by order of the General Prosecutor.

## 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 | X |

A - non-compliant. According to the Criminal Procedure Code Art. 270, the Prosecutor General has the authority to change the jurisdiction of any case under investigation of APO. The Code or any bylaws do not provide clear grounds for removing a case from APO's investigation. Therefore, Moldova is not compliant with this element. At the same time, during the on-site visit, the monitoring team was assured that from the beginning of 2022 there were no cases of changes in the jurisdiction in the cases of APO with which the prosecutors of the APO would not agree.

B – non-compliant. According to Moldova authorities, in 2022, there were no cases of removal or transfer of cases outside of the legally established procedure. All decisions to change the jurisdiction were made by the Prosecutor General solely at the request of the head of APO. However, as there are no clear grounds for removing the cases, Moldova cannot comply with this benchmark.

## 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 | ✓ |

A – compliant. In addition to leading its own investigations into corruption (see above), according to Criminal Procedure Code Art. 270-1 (2) and Art. 9 of the Law on the Prosecutor's Office, the APO was

responsible for supervising the investigation of corruption offences which are investigated by the National Anti-Corruption Centre. Therefore, APO supervised all non-high-level corruption cases of NAC, as well as any high-level corruption cases on illicit enrichment and money laundering investigated by NAC. APO does not supervise or lead other investigations, therefore corruption and related cases constitute the main focus of its activity.

B – compliant. According to Art. 9 of the Law on the Prosecutor's Office, the Anti-corruption Prosecutor's Office is responsible for presenting corruption cases in courts of first instance, appeal and cassation courts. This is the main focus of their activity and they do not go to trial with other cases with the following exception - according to Criminal Procedure Code Art. 271, "if a person has committed two or more offenses, at least one of which is within the competence of the specialized prosecutor's office, the criminal prosecution shall be exercised by the specialized prosecutor's office."

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

### *Background*

In 2018, Moldova established a dedicated body to deal with identification, tracing and return of corruption proceeds, as well as with the management of seized and confiscated assets in corruption cases – the Criminal Asset Recovery Agency (CARA), which is a structural department of the National Anti-Corruption Centre.

### *Assessment of compliance*

#### Benchmark 8.2.1.

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

Compliant. In Moldova, Criminal Asset Recovery Agency (CARA) has a mandate and responsibility to identify, trace and organise return of corruption proceeds under the Law on Criminal Asset Recovery Agency. CARA functioned in practice in 2022. In 2022, it had a staff of 35 persons, including 17 specialised officials dealing with the identification, tracing and return of criminal proceeds. CARA published annual reports on its activities. According to the authorities, in 2022, 250 requests have been made for CARA's actions, including 171 related to corruption cases. As part of the parallel financial investigations carried out by the criminal investigation officers, CARA identified and seized 630 assets with the total value of approximately 2.2billion MDL (approximately 108 million EUR).

## 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 | ✓ |

Compliant. In Moldova, CARA (mentioned in in the previous benchmark) has a mandate and responsibility to organise management of seized and confiscated assets in criminal cases, including corruption, under the Law on Criminal Asset Recovery Agency. CARA functioned in practice n 2022. In 2022, nine staff members (out of 35) were specialised in the management of seized and confiscated assets. CARA publishes annual reports on its activities. In 2022, the CARA's report contained information on the number of assets in the management of CARA, the number of assets it evaluated, disposed of, and other information on its activities of asset management.

## 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*

In Moldova, in 2022, two institutions had mandate and responsibility to investigate corruption offences – the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office. For the purposes of this monitoring, if the country has more than one body investigating corruption, including high-level corruption, the one with primary responsibility for such crimes will be reviewed. In Moldova, in 2022, before the competence of these bodies was changed in 2023, APO had responsibility for investigating most high-level corruption offences, with exception of illicit enrichment and money laundering that were investigated by NAC. APO is therefore evaluated under benchmarks 3.1-3.3 (as the specialised anti-corruption investigative body of Moldova) and 3.4 (as the specialised anti-corruption prosecution body of Moldova).

***Assessment of compliance***

## Benchmark 8.3.1.

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

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

On 15 June 2022, the Chief Prosecutor of the Anti-Corruption Prosecution Office was appointed to take duties from 1 August 2022. This selection procedure is evaluated below.

A – compliant. The Law on the Prosecutor's Office (Art. 25-1) regulates the main steps of the process, including announcement of the vacancy, submission of applications, initiation of the competition by the High Council of Prosecutors, the two stages of the competition: pre-selection of candidates by a special commission established by the Superior Council of Prosecutors and selection of the candidate for the position by the Superior Council of Prosecutors from among eligible candidates, as well as rules for setting up of the special commission. Further details are provided in the Regulations approved by the Prosecutor General.

B – compliant. The law requires that information about outcomes of the main steps is published online. Such information, during the selection procedure undertaken in 2022 for the position of the APO's Chief Prosecutor, has been published on the website of the Superior Council of Prosecutors, including information regarding initiation of the contest, amendment of the Regulation on the organization and conduct of the public contest, setting up of the Special Commission for the preselection of candidates for the position, examination of the admissibility of candidates at the stage of pre-selection of candidates, results of the selection phase, and nomination of the candidate to the position of the APO's Chief Prosecutor.

C – compliant. The vacancy and information regarding initiation of the contest was published on the website of the Superior Council of Prosecutors on 4 February 2022.

D – compliant. Art. 25-1 of the Law on Prosecution Office requires that information on the opening of the competition and the pre-selection shall be published on the official website of the Superior Council of Prosecutors at least 15 days before the deadline for submission of applications.

E – compliant. Eligible candidates were provided with opportunity to apply. Eligibility requirements are provided in the Art. 25-1 of the Law on Prosecution Office, and all candidates meeting the requirements had the opportunity to apply. Initial deadline was set at 20 days (until 25 February 2022) and was further extended for another 12 days (until 9 March 2022).

F – compliant. The selection procedure undertaken in 2022 for the position of the Chief Prosecutor of APO was based on the assessment of candidates' merits (experience, skills, integrity) as required in legislation. A Special Commission (set up by the Superior Council of Prosecutors and comprising one candidate proposed by the President, one – by the Minister of Justice, and three candidates proposed by the Council itself) first verified, in a closed session, that the candidates met the eligibility criteria and invited eligible

candidates to the interviews. During the interviews, the Commission evaluated managerial and professional competences of candidates through questions and discussion of the proposed management and institutional development concepts which candidates submitted. Candidates have been also reviewed in regard to the irreproachable reputation and whether there had been any reasonable suspicion of committing acts of corruption, or related acts within the meaning of the Law on Integrity. Each member of the Special Commission had to fill out the score sheet for every candidate rating them according to the criteria and methods provided for the in the respective Regulations.

NAC is one of the specialised anti-corruption investigative bodies in Moldova. The monitoring team is concerned with the process of selection of NAC Director in 2022, including the selection procedure. In contrast, competition for selection of the Director of National Anti-Corruption Centre, through which a new Director was appointed on 13 February 2022, would not have met the above criteria. The Law on National Anti-Corruption Centre was amended in August 2021 eliminating open competition for the selection of the Director. Although, it falls outside of this monitoring in 2022, in view of changes of competences of NAC and it assuming responsibility for investigation of high-level corruption in Moldova starting from August 2023, NAC will be evaluated under this Benchmark in the next cycles of monitoring.

## 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 | ✓ |
| C. | The law regulates the main steps of the procedure | ✓ |
| D. | The law requires that information about the outcomes of different steps (if there are several steps) of the procedure is published online | x |

A – compliant. The chief prosecutor of APO can be dismissed before the end of the mandate on the grounds provided by the Law on Prosecution Office Art. 58.

B – compliant. Grounds for dismissal include submitting the resignation; the disciplinary sanction of release from the office; a final decision finding an incompatibility; refusal to be subject to verification on integrity of holders of public offices or not submitting an asset declaration; a final decision finding a conflict of interests, etc. The monitoring team considers these grounds clear and, if applied correctly, they should exclude political or other undue interference. The grounds also do not include such grounds as “breach of oath”, “improper performance of duties,” or “loss of confidence or trust” mentioned in the benchmark.

C – compliant. The law regulates the main steps of the dismissal procedure. For cases of resignation, the dismissal is issued by the Order of the Prosecutor General on receipt of a written resignation. The dismissal on other grounds shall be made within 5 working days from the occurrence or the knowledge of the case, also by the Order of the Prosecutor General. This is communicated to the prosecutor within 5 working days from the issuance, but prior to the date of dismissal. The order of the Prosecutor General can be challenged in court.

D - non-compliant. There is no requirement in the law to publish information about the steps or outcomes of the dismissal procedure.

## Benchmark 8.3.3.

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

Not applicable. Former Chief Prosecutor of the Anti-Corruption Prosecution Office was dismissed by the Prosecutor General in 2021 after being suspended from his post in 2020. There have been no dismissals in 2022.

## Benchmark 8.3.4.

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

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

A-F – compliant. See Benchmark 3.1.

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

#### *Assessment of compliance*

## Benchmark 8.4.1.

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

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

A – compliant. In Moldova, the Anti-Corruption Prosecution Office can apply covert surveillance, intercept communications, and conduct undercover investigations, however not directly. APO does not have a technical assistance unit with technical capabilities; it has to rely on the equipment and specialised staff of other bodies, including the NAC, the police and other law enforcement agencies. On the other hand, NAC has its own department providing technical assistance in the corruption investigations that carries out wiretapping, covert operations, surveillance, financial examinations, handwriting examinations, etc., and it

is this department that is mostly utilized by APO. Such an arrangement is compliant with the benchmark, although, in the opinion of the monitoring team, it is not ideal, especially, for highly sensitive high-level corruption cases as it creates a potential for information leaks.

B – compliant. According to authorities, prosecutors of APO have powers to access tax, customs, and bank data in line with provisions stipulated in the Order of the Prosecutor General on the approval of relevant regulation; in the case of bank data – the procedure is regulated by the Criminal Procedure Code and authorization from the court is required. Access to the relevant databases, covered under this element of the benchmark, is provided on the basis of a request from the General Prosecutor's Office to a Tax or Customs agency. The purpose of the access should be indicated in the application and the necessary information and services need to be listed. Moldovan authorities explained that once the prosecutor has obtained authorised access to use the databases, he or she may at any time independently access in real time any public data system, such as: Access-Web public service agency, State Tax Inspectorate database, Integrated Customs Information System, Criminal and Criminological Information Registry, Border Police, etc. While formally Moldova complies with this element of the benchmark – such authorization procedure is overly burdensome and limits APO's independence from Office of the Prosecutor General. The monitoring team was also informed that procedure of access to bank information by APO has been in the process of amending with the view to limit it to prosecutorial authorization only; this was still ongoing in 2023.

## 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 | ✓ |

A-C – compliant. The Anti-Corruption Prosecution Office publishes its annual reports. Such report for 2021 and 2022 can be found online and contain the information listed in the benchmark.

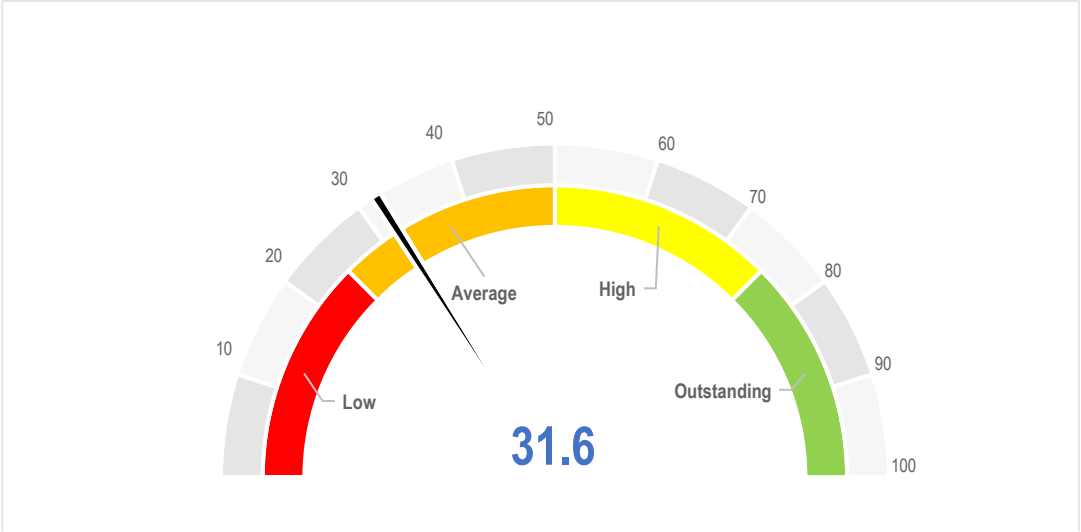
### Assessment of non-governmental stakeholders

Non-governmental stakeholders confirmed information shared by the National Anti-Corruption Centre and the Anti-Corruption Prosecutor's Office that in 2022 they were overloaded with cases of petty corruption. None of the institutions has a clear exclusive focus on the high-level corruption; thus, high-level corruption is not prioritised. Non-governmental stakeholders hoped that the new delineation of functions introduced in 2023 could help produce better enforcement results and the needed high-level prosecutions. Although, overall opinion was that enforcement of high-level cases has increased since 2022. Separately, and although not currently covered by this monitoring report, the non-governmental stakeholders raised concerns over the abolishment of the competitive procedure for the selection of the Director of NAC. While they expressed favourable opinions of the new Director and no concerns over his integrity or political affiliation (he comes from the civil society background and has general trust among the non-government stakeholders), a change "to a non-transparent and obscure procedure" in principle is problematic for the future selections.

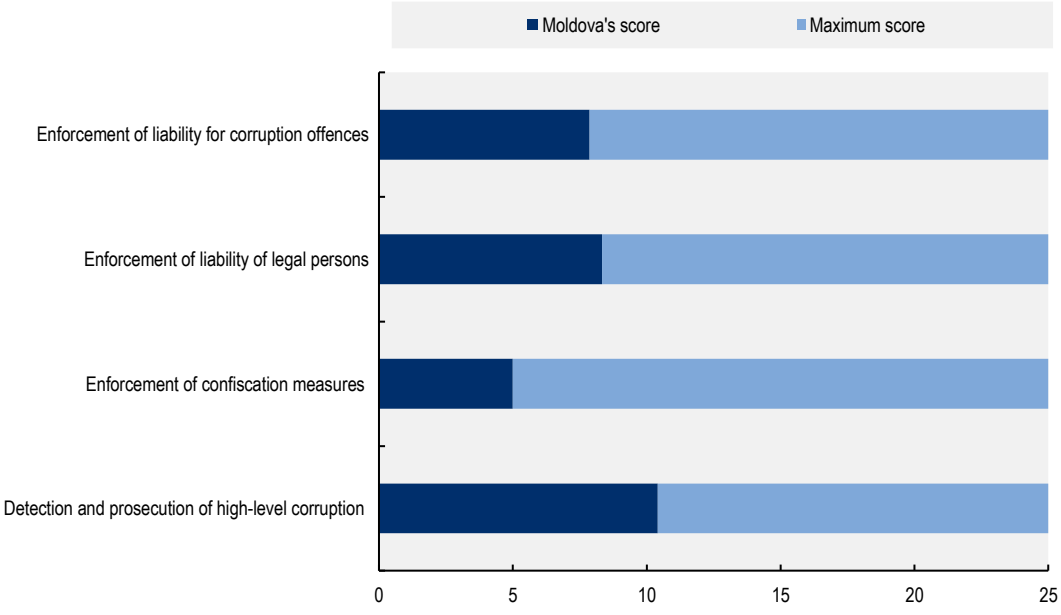
# 9 Enforcement of Corruption Offences

Corruption offences, especially for trading in influence and active bribery have been enforced in Moldova in 2022. However, enforcement on other offences should be stepped up, including passive bribery and bribery in the private sector. Moldova is yet to commence an investigation into a foreign bribery and had no cases of money laundering with corruption as a predicate offence or cases of illicit enrichment. Special exemption from active bribery and trading in influence leaves loopholes for abuse; statute of limitation for petty forms of corruption is too short and impedes investigations. Not all statistical data on enforcement is disaggregated and published online, and its collection is fragmented among various institutions. Moldova criminalises corruption perpetrated by legal persons. However, monetary sanctions are low and there have been only two cases of legal persons held liable for corruption in 2022. This is not enough to establish consistent enforcement practice. Confiscation is applied in Moldova; however, examples were not provided for more in-depth analysis of confiscation practices. Moldova does not track enforcement of high-level corruption cases.

## 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

### *Assessment of compliance*

## Benchmark 9.1.1.

Sanctions are routinely imposed for the following offences:

| Element | Compliance |
|---|---|
| A. Active bribery in the public sector | ✓ |
| B. Passive bribery in the public sector | ✓ |
| C. Active or passive bribery in the private sector | X |
| D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of bribe | X |
| E. Bribery with an intangible and non-pecuniary undue advantage | X |
| F. Trading in influence | ✓ |

"Routinely imposed" in this monitoring means that for each element (A-F) there were at least 3 cases of sanctions imposed for the respective offences in the monitoring period (calendar year of 2022).

Moldova does not record statistics on the first instance convictions for each element of the benchmark in a centralised manner. Statistics is kept separately by various institutions. The below information (see table) was provided by the National Anti-Corruption Centre (NAC) and Anti-Corruption Prosecution Office (APO) and represents only part of the enforcement efforts of Moldova. Statistical data on offer and promise or acceptance of a promise or offer of a bribe, as well as on non-pecuniary and intangible advantages is not kept and does not allow to assess Moldova's performance on these points.

General statistics (number of first instance convictions in 2022):

| | 2022<br>Cases investigated by APO | 2022<br>Cases investigated by NAC under APO's supervision and cases investigated by APO |
|---|---|---|
| A. Number of persons convicted for active bribery in the public sector | 34 | 100 |
| B. Number of persons convicted for passive bribery in the public sector | 12 | 54 |
| C. Number of persons convicted for active bribery in the private sector | 0 | 0 |
| D. Number of persons convicted for passive bribery in the private sector | 2 | 2 |
| E. Number of persons convicted for offering or promising of a bribe as a stand-alone offence | 0 | 0 |
| F. Number of persons convicted for bribe solicitation or acceptance of an offer/promise of a bribe as a stand-alone offence | 0 | 0 |
| G. Number of persons convicted for bribery with an intangible and non-pecuniary undue advantage | 0 | 0 |
| H. Number of persons convicted for trading in influence | 70 | 199 |

Based on the case examples provided by the authorities, the following table shows compliance with the benchmark's elements in 2022:

| Element | Compliance |
|---|---|
| A. Active bribery in the public sector | Compliant |
| B. Passive bribery in the public sector | Compliant |
| C. Active or passive bribery in the private sector | Not compliant |
| D. Offering or promising of a bribe, bribe solicitation or acceptance of an offer/promise of a bribe as stand-alone offences | Not compliant |
| E. Bribery with an intangible and non-pecuniary undue advantage | Not compliant |
| F. Trading in influence | Compliant |

The authorities provided two examples of cases with conviction for passive bribery in the private sector in 2022, which is demonstrates enforcement but still falls short of meeting “routine application” criterion of this monitoring.

## 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 |

Non-compliant. In Moldova, illicit enrichment is punishable under Criminal Code Art. 330-2. In 2022, there were no cases of conviction for illicit enrichment in Moldova. Non-criminal confiscation of unexplained wealth of public officials (unjustified assets) is provided in Moldova by the Law on National Integrity Agency but it has not been applied in 2022.

## Benchmark 9.1.3.

| | Compliance |
|---|---|
| There is at least one case of the started investigation of foreign bribery offence | X |

Non-compliant. In Moldova in 2022, there have been no officially registered investigations of giving of a bribe to a foreign public official under Criminal Code Art. 325 (active corruption).

## 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 |

A – non-compliant. In 2022, there were no convictions for money laundering with possible public sector corruption as a predicate offence in Moldova.

B – non-compliant. In 2022, there were no convictions for money laundering sanctioned independently of the predicate offence in Moldova.

## Benchmark 9.1.5.

| | Compliance |
|---|---|
| In all cases of conviction for a corruption offence, public officials are dismissed from the public office they held | ✓ |

Compliant. For public officials convicted of acts of passive bribery, Criminal Code Art. 324 provides in all cases mandatory complementary punishment in the form of deprivation of the right to occupy certain public positions or to exercise a particular activity for a period from 5 to 7 years. The same is applicable for public officials convicted of illicit enrichment under Criminal Code Article 330(2). There is no such punishment for trading in influence (Criminal Code Art. 326) and for active bribery (Criminal Code Article 325) when such crimes are committed by public officials. However, according to Criminal Code Art.65, which states that deprivation of the right to hold certain positions or to exercise a certain activity can be applied as a complementary punishment – in most cases the public officials are usually covered in practice.

In 2022, 355 persons have been convicted for corruption offences in 2022 in the first instance in cases investigated by APO and NAC, of them 54 for passive bribery, 100 for active bribery, and 199 for trading in influence. In 2022, according to Moldovan authorities, all 54 individuals found guilty of passive bribery in the public sector have been dismissed from their positions, there were no convictions for illicit enrichment. For the crime of trading in influence 14 persons who were sentences in 2022 in the first instance have been publish officials and complimentary punishment in line with Criminal Code Art. 65 was applied to them all. For the crime of active bribery 2 public officials have been convicted in the first instance – complimentary punishment as described above was applied to one of the two, another public official was sentenced to 3 years of imprisonment, dismissing him from the office but not restricting in holding public positions in the future but that goes beyond the scope of this 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) | X |
| B. The special exemption is applied on the condition that voluntary reporting is valid during a short period of time and before the law enforcement bodies become aware of the crime on their own' | X |
| C. The special exemption is not allowed when bribery is initiated by the bribe-giver | X |
| D. The special exemption requires active co-operation with the investigation or prosecution | X |
| E. The special exemption is not possible for bribery of foreign public officials | X |
| F. The special exemption is applied by the court, or there is judicial control over its application by the prosecutor | X |

A-F – non-compliant. In Moldova, the Criminal Code provided for a special exemption from liability for active bribery and active trading of influence. For example, Criminal Code Art. 325 (active corruption) stipulates that "the person who promised, offered, or provided the goods or services listed in Art. 324 shall be exempt from criminal liability provided that the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the offence he/she committed." The same norm is contained in Criminal Code Art. 326 (trading in influence).

Exemption is applied automatically if the elements listed in the article are met. During the on-site visit, the APO prosecutors confirmed that this wording in the law is a loophole used to avoid punishment by persons who committed active bribery or trading in influence offences. Prosecutors noted that in situations when the person under investigation becomes aware of it through a leak of information or otherwise and writes a self-incriminating report, they have to close the case against that person. There is no requirement to make the report in a particular timeframe or before the law enforcement bodies become aware of the crime on their own. Special exemption is not limited to instances when the bribe was extorted or initiated by another party. There is no requirement for active cooperation with investigation or prosecution. The exemption can be applied to all active bribery cases, including bribery of foreign public officials. During the investigation, the prosecutor has the authority to make the decision to close such a criminal case. In this case, the law does not have a direct mechanism of judicial control, but the prosecutor`s decision may be subject of consideration during the court hearing on charges of a person whose actions were exposed by the person who wrote, a self-incriminating report. This does not qualify as judicial control over the application of this norm.

## 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 | ✓ |

A – non-compliant. According to Criminal Code Art.16, most corruption offences fall within the classification of grave or particularly grave offences, as they constitute acts for which criminal law provides for a

maximum punishment by imprisonment between 6 and 15 years. This sets statute of limitation of 15 years for serious offences and 20 for extremely serious offences. The statute of limitations is calculated from the day when the crime is committed until the date of the final decision of the court. However, active trading in influence (Criminal Code Art. 326 paragraph 1-1) qualifies as crime of medium gravity, for which statute of limitation constitutes 5 years. Passive corruption in the small amounts (Criminal Code Art. 324, paragraph 1) qualifies as minor crime – with statute of limitation of 2 years.

In 2022, Moldova had 10 cases of corruption of public officials terminated because of the expiration of the statute of limitation, 8 of these cases have been on passive bribery in small amounts. The prosecutors of APO confirmed that the limitation period for such offences is too short and represents an obstacle to effective investigation and prosecution in the cases provided in Criminal Code Art. 324(petty passive corruption), which has a statute of limitation of 2 years.

B – compliant. According to the provisions of CPC Art. 259, the criminal investigation shall be carried out within a reasonable time. The criminal investigation deadline set by the prosecutor is mandatory for the criminal investigation officer and may be extended at the investigator's request. According to the authorities, no corruption cases were terminated in 2022 because of the expiration of the time limit for investigation or prosecution.

## 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 | ✓ |
| F. Types and levels of officials sanctioned | X |

Elements A, B, C, D, E – compliant. Element F – non-compliant. Enforcement statistics on corruption offences is collected by different authorities depending on their involvement in the enforcement process, including by the Agency for Court Administration, Anti-Corruption Prosecution Office, and National Anti-Corruption Centre.

In 2022, information on elements B, C and D has been published for all corruption offences quarterly and annually by the Agency for Court Administration and can be found here. In 2022, National Anti-Corruption Centre published their annual report, which provided the number of cases opened by the Centre (element A). Annual report containing such statistics for APO for 2021 was also published, which has similar information from this office. Information required for publication under element F can also be found in the report of APO. Information under element E was not published in 2022 in Moldova.

## Benchmark 9.1.9.

| | Compliance |
|---|---|
| Enforcement statistics on corruption offences is collected on the central level | X |

Non-compliant. Enforcement statistics on corruption offences is not collected on the central level in Moldova. Agency for Court Administration publishes collects and publishes part of the enforcement statistics, the rest is not centralised.

### Indicator 9.2. The liability of legal persons for corruption offences is provided in the law and enforced

***Assessment of compliance***

## Benchmark 9.2.1.

| | Compliance |
|---|---|
| The liability of legal persons for corruption offences is established in the law | ✓ |

Compliant. Moldovan law establishes criminal liability and sanctions applicable to legal persons for active bribery in the public sector (Criminal Code Art. 325), active bribery in private sector (Criminal Code Art. 334), trafficking in influence (Criminal Code Art. 326), and money laundering (Criminal Code Art. 243).

## 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 |

Non-complaint. According to the Criminal Code of Moldova, Art. 21 a legal person is criminally liable for a crime provided for by the Code and committed on behalf of or through and or in favour of the legal person, by the responsible person or due to lack of supervision by the responsible person. Art. 21 paragraph 4 states that corporate liability shall not exclude the liability of natural persons for the crimes committed, however, there are no provisions that directly point to the autonomous nature. Corporate liability is linked to certain conditions (who commits and for what interests), so it can be assumed that “a person with managerial functions” must be at least identified.

Chapter VI, Section III, of the Criminal Procedure Code of Moldova regulates criminal proceedings against legal persons and stipulates that general rules of criminal proceedings apply to legal persons with some special provisions provided in the Chapter, in particular, concerning who represents the legal person, how the territorial competence is established and what preventative measures can be applied to the legal person at the pre-trial stage. The rest of the procedures – collection of evidence, assessment of evidence, decisions taken at the end of the criminal prosecution, enforcement measures – are applied similarly to proceedings against natural persons, including application of Criminal Procedure Code Art. 279-1 on

merging and splitting of criminal cases. Moldovan authorities in their written responses opined that in the case of concurrent criminal liability of natural and legal persons, in principle, it might be possible to criminally prosecute and send to court separately a case against a legal person in instances when 1) the accused has disappeared, evading criminal prosecution or trial, or his location is not established, 2) the person who can be accused is not identified. The benchmark requires that the law provides for possibility of separate proceedings and therefore Moldova could be compliant in the procedural part only depending on interpretation confirmed by the case-law. However, in discussions during the on-site visit, the prosecutors opined that even though the corporate liability does not require a previous conviction of the natural person, and if the natural person in not identified, the criminal action might be in principle split in different legal proceedings that will each run their separate course – it is unlikely to happen in practice.

## 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 |

Non-compliant. In Moldova, sanctions for corporate offences include fines, which are applied as the main punishment (Criminal Code Art. 63). Criminal Code Art. 64 identifies the amount of the fine for legal entities and establishes limits in conventional units (1 conventional unit, “cu”, is 50 lei). The minimum fine for active bribery is 3.000 cu (150,000 lei or approx. 7,480 EUR) and the maximum is 18,000 cu (900,000 lei or approx. 44,882 EUR). Other corporate offences provide for similar ranges: the minimum fine for trading in influence is 3,000 cu and the maximum - 12,000 cu; 5,000 cu to 15,000 cu for active bribery in private sector; and 8,000 cu to 16,000 cu for money laundering. The sanctioning system for corporate offences links the amount of the bribe with the amount of the fine by setting higher fines for aggravated offences involving larger amounts of bribes. A better approach would be to directly link the calculation of the fine to the bribe amount or proceeds received from the corruption offence (for example, not less than X times the amount of the bribe or corruption proceeds).

There are no sentencing guidelines available for judges to determine when to impose the minimum or maximum fine (or mitigating and aggravating factors specifically applicable to legal persons). Instead, courts have to rely on Criminal Procedure Code Art. 385 and Criminal Code Art. 75, which contain the general criteria for the determination of the sanction and on Criminal Code Art. 64 para 4, which contains criteria specifically applicable to legal persons, which links fines to the amount of damage caused as well as the economic and financial condition of the legal person – leaving wide room for interpretation. There is no enforcement practice to evaluate how these sanctions apply in practice and what effect they have on individual companies committing corruption offences.

In conclusion, the monetary sanctions are not proportionate and dissuasive, the minimum fine may be significant for micro and small enterprises, while the maximum fine is not dissuasive for large companies. In addition, the Criminal Code allows maximum fines to legal persons up to 60,000 cu, but for bribery the maximum is only 18,000, which is not justified.

## 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) | ✓ |

Compliant. According to Criminal Code Art. 73 and 74, deprivation of the right to exercise a certain activity and liquidation are available additional sanctions. The banned activities may include the right to conclude certain transactions, to issue shares, to receive state aid, etc. During the on-site, it was also stated that the right to participate in public procurement proceedings is also covered, though not explicitly, by Criminal Code Art. 73.

## 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 |

Non-compliant. Due diligence (compliance) defence to exempt legal persons from liability, mitigate, or defer sanctions is not provided for in Moldova.

## 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 |

A-C – non-compliant. Moldova has provided examples of two cases in which monetary sanctions and non-monetary sanctions have been applied to legal persons in 2022. However, “routinely applied” in this monitoring means that for each element (A-C) there should be at least three cases of respective sanctions applied to legal persons in the monitoring period (calendar year of 2022). In 2022, there were no cases of confiscation of corruption proceeds from legal persons for corruption offences.

## Indicator 9.3. Confiscation measures are enforced in corruption cases

### *Assessment of compliance*

## Benchmark 9.3.1.

Confiscation is routinely applied regarding:

| Element | Compliance |
|---|---|
| A. Instrumentalities of corruption offences | ✓ |
| B. Proceeds of corruption offences | ✓ |

A-B – compliant. In 2022, the courts of first instance, in 62 sentences, ordered the application of special confiscation of assets of both instrumentalities of corruption offences and proceeds from corruption offences. Disaggregated statistics is not collected. “Routinely applied” means that there were at least three cases of confiscation of instrumentalities (for element A) and three cases of proceeds of corruption offences (for element B) ordered by the first instance courts in 2022. Moldova provided such three case examples of each type (under Criminal Code Art. 106, paragraph 2a - confiscation of assets used or intended for the use of crime and paragraph 2b - confiscation of assets derived from the crime or other benefits obtained from the use of these assets).

## Benchmark 9.3.2.

| | Compliance |
|---|---|
| Confiscation orders in at least 50% of corruption cases are fully executed | X |

Non-compliant. The authorities did not provide information on the total number of the executed confiscation orders in corruption cases in 2022, explaining that such statistics is not kept in Moldova.

## 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 |

A-D – non-compliant. Moldova did not provide examples of cases under any of the benchmark’s elements.

## 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 |

A-B – non-compliant. Non-conviction-based confiscation of instrumentalities and proceeds of corruption offences is not provided by law in Moldova. Extended confiscation in criminal cases is provided by law in Moldova but it was not applied in practice in 2022.

## 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 |

A-B – non-compliant. In 2022, there were no cases of return of corruption proceeds to Moldova from abroad, and Moldova did not send abroad any requests to confiscate corruption proceeds.

### Indicator 9.4. High-level corruption is actively detected and prosecuted

***Assessment of compliance***

## 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 |

Non-compliant. Moldova did not provide information in regard to the punishment for high-level corruption in 2022 due to the fact that such statistics is not collected in the country. According to the monitoring methodology, if the respective data is not available, the monitoring will assume that the country is not 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 | X |
| 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 | X |

In Moldova, immunity is provided to the President of Moldova, members of parliament, including its President, the Prime Minister, judges, and prosecutors. According to the authorities, in 2022, lifting of immunity was requested and granted regarding four members of Parliament and four judges. The compliance below is evaluated based on information provided on these eight cases. Authorities provided details for these cases. The compliance below is assessed based on information provided on all eight cases which happened in 2022.

A – non-compliant. In the case of the immunity lifted from the MPs, the process took in total from 1 to up to 7 days from the first request of the investigative body to the Prosecutor General to the day when the Parliament lifted the immunity of its members, which is swift and does not represent undue delays In the case example of the judges, the situation differs. In one case, the Superior Council of Magistracy granted the request to lift immunity in one day after receiving the first request of the investigative body to the Prosecutor General, in another case - it took more than 4 months, which in the opinion of the monitoring team viewed as delayed.

B – non-compliant. The legislation does not provide clear criteria for lifting immunity.

C – compliant. The procedure of lifting immunity of Members of Parliament is regulated in detail in the Law on Status of the Member of Parliament, the regulations of the Parliament, in addition to the Criminal Procedure Code. The procedure for lifting of immunity of judges is regulated in detail in the law on status of the Judge, and regulations of the Supreme Council of Magistracy.

D – non-compliant. According to the authorities, the immunity did not impede the investigation and prosecution of the corruption offences in the eight cases of 2022. However, despite the rather clearly defined procedure for removing immunity from deputies and four cases of MP immunity lifted, the monitoring team had some concerns, in principle, regarding the procedure for removal of immunity from MPs in Moldova. All four MPs whose immunity was swiftly removed were representatives of the opposition parties in the Parliament. The legislation provides for a possibility for this process to take up to 22 days, which could impede the effective investigation and prosecution of corruption.

In at least one case of judicial lifting of immunity, the procedure took more than 4 months, which in the opinion of the monitoring team could impeded investigation and prosecution of such a case.

In addition, the monitoring team believes that investigation and collection of evidence in cases of corruption committed by MPs may be further hindered by the requirement to notify the MP, which can result in the destruction of direct evidence. This, in turn, makes further investigative actions such as searches and seizures of documents, mobile phones, and other computer equipment pointless in relation to the MP. It recommends Moldova to address these concerns through legislative changes.

## 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%) | ✓ |

Compliant (100% score). The monitoring team did not identify cases when a public allegation of high-level corruption was left not reviewed or investigated, or decisions not to open or to discontinue an investigation were taken and not explained to the public.

### Assessment of non-governmental stakeholders

During the on-site visit, the non-governmental stakeholders shared the opinion that the high-level cases started to be investigated by the National Anti-Corruption Centre and the Anti-Corruption Prosecution Office, and that, the prosecutors, in particular, are no longer reluctant to investigate such cases. However, the quality of the investigations is not always good, the cooperation between the two institutions needs improving, and that cases often are stalled in the courts, which either lack judges or are delayed for other reasons.

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

## THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

The fifth round of monitoring under the Istanbul Anti-Corruption Action Plan assesses Moldova'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 Moldova'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 Moldova's progress in these areas will follow.

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